Filing Receipt

Received - 2021-10-28 02:23:35 PM
Control Number - 51415
ItemNumber - 687

SOAH DOCKET NO. 473-21-0538
DOCKET NO. 51415

APPLICATION OF SOUTHWESTERN ELECTRIC POWER COMPANY FOR AUTHORITY TO CHANGE RATES	**§** **§** **§**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

SOUTHWESTERN ELECTRIC POWER COMPANY'S REPLY TO THE EXCEPTIONS TO THE PROPOSAL FOR DECISION

TABLE OF CONTENTS

SOAH DOCKET NO. 473-21-0538
DOCKET NO. 51415

APPLICATION OF SOUTHWESTERN ELECTRIC POWER COMPANY FOR AUTHORITY TO CHANGE RATES	**§**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

SOUTHWESTERN ELECTRIC POWER COMPANY'S REPLY TO THE EXCEPTIONS TO THE PROPOSAL FOR DECISION

I. INTRODUCTION AND EXECUTIVE SUMMARY

Southwestern Electric Power Company (SWEPCO or the Company) files this Reply to the Exceptions to the Proposal for Decision (PFD). SWEPCO replies to the exceptions filed by Commission Staff (Staff) and six intervening parties. Consistent with the Commission's September 20, 2021 Exceptions and Reply memo, SWEPCO has organized its replies to follow the outline of the PFD. In section headings, SWEPCO has identified the party to which it is replying. SWEPCO's Reply addresses the following PFD sections:

Section V.A.2 – Dolet Hills Power Station Retirement (OPUC)

- Office of Public Utility Counsel (OPUC) recommends the Dolet Hills Rate Rider exclude any return on the Oxbow mine investment and any recovery of the DHLC equity and taxes even before the retirement of the Dolet Hills Power Station (Dolet Hills plant).

- While lignite production operations did cease in May 2020, DHLC continued to deliver lignite from the Oxbow reserves to the Dolet Hills plant in 2021 and was doing so when the rates to be set in this proceeding became effective in March of 2021.

- SWEPCO continues to have invested capital in DHLC and Oxbow used and useful in providing service until all lignite has been delivered to the plant and burned to produce electricity.

Section V.A.4 – New Generation Capital Investment (Sierra Club)

- Sierra Club urges the Commission to disallow the entirety of Test Year O&M incurred at three of SWEPCO's coal and lignite fueled power plants (Flint Creek, Welsh, and Dolet Hills), as well as every dollar of capital invested in these plants during the Test Year. Sierra Club makes this far-fetched request even though its own witness did not challenge any individual O&M expenditure or investment at these plants.

Section V.A.4.a – Dolet Hills Test-Year Investment

- Sierra Club witness Ms. Glick did not address any aspect of the O&M expenses incurred by SWEPCO at the Dolet Hills plant or any item of capital invested in the Dolet Hills plant.

- The PFD discusses the evidence that was presented by SWEPCO and unchallenged by Sierra Club that establishes SWEPCO's *prima facie* case for prudence.

Section V.A.4.b – Flint Creek and Welsh Test-Year Investment

- The uncontested evidence demonstrates that SWEPCO regularly reviews capital projects that could provide economic, environmental, reliability, or safety-related benefits to SWEPCO's generating fleet, including the Flint Creek and Welsh plants.

- The evidence demonstrates that the O&M expenses incurred at the Flint Creek and Welsh plants provided positive results for customers.

Section V.A.4.c.i – Additional Investment: Flint Creek ELG/CCR Retrofit

- The PFD confirms that additional investments concerning the Flint Creek ELG/CCR Retrofit are not included in SWEPCO's request for relief in this case. None of these costs will be included in rates until the Commission determines them to be prudent.

- Sierra Club has provided no basis to overturn the PFD nor has it shown that this issue falls within the scope of this proceeding.

Section V.A.4.c.ii – Additional Investment: Potential Natural Gas Conversion of Welsh

- SWEPCO has begun to study but has made no final determination regarding whether natural gas conversion of the Welsh plant is in customers' best interest.

- A potential future conversion of the Welsh plant to run on natural gas is beyond the scope of this current rate case, and the ALJs were correct in so finding.

Section VI.A – Return on Equity (CARD and TIEC)

- Both Texas Industrial Energy Consumers' (TIEC) and Cities Advocating Reasonable Deregulation's (CARD) recommendations are significantly below the authorized returns for other Texas utilities and well below the average authorized returns for utilities across the country.

- SWEPCO would not be able to earn a reasonable return or access capital under the recommendations of TIEC and CARD.

Section VI.A.7 – Staff's Proposed ROE Adjustment and Independent Consultant for Transmission Outage (Staff)

- Staff has not identified any shortcomings in the quality of SWEPCO's services and management or the efficiency of its operations that would support its proposed ROE penalty under PURA § 36.052 and the evidence shows that SWEPCO makes reasonable efforts to prevent interruptions of service in accordance with 16 TAC § 25.52(b)(1).

- SWEPCO has significantly increased transmission vegetation management expenditures since 2017 and has spent approximately $60 million per year on capital additions to rebuild aging transmission infrastructure since its last rate case.

Section VI.B – Cost of Debt (Staff)

- Staff recommends an adjustment to remove a Series I Hedge Loss from the cost of debt calculation. The PFD rightfully denied Staff's recommendation because the hedge loss amortization occurred during the Test Year and most of the Rate Year.

- Staff's recommendation does not consider other potential changes after the Test Year.

Section VI.E – Financial Integrity, Including "Ring Fencing" (Staff)

- The PFD rightfully rejected Staff's recommendations because these measures are unnecessary, would increase compliance costs, and would not protect customers.

Section VII.A.5 – Distribution Vegetation Management Expenses and Program Expansion (Staff and OPUC)

- Staff's proposed unfunded mandate that SWEPCO implement a four-year vegetation management cycle on its Texas distribution system is cost prohibitive, contrary to Commission precedent, inconsistent with the evidentiary record, and arbitrarily punitive in violation of PURA.

- OPUC excepts to the PFD's recommendation that an additional $5 million for distribution vegetation management is belied by record evidence:

    - establishing that increased vegetation management spending leads to positive reliability results;

    - demonstrating that additional vegetation management spend approved in and implemented since SWEPCO's last base rate case resulted in dramatic improvement in the performance on the targeted distribution circuits trimmed in 2018 and 2019; and

- showing that the increased spending recommended in the PFD is likely to produce reliability improvement on targeted circuits similar to those seen in 2018 and 2019.

Section VII.A.6 – Allocated Transmission Expenses Related to Retail Behind-the-Meter Generation (TIEC)

- TIEC's exception to what it refers to as "dicta" in the PFD's analysis of the reasonableness of SWEPCO's Test Year Network Integration Transmission Service (NITS) charges from the Southwest Power Pool (SPP) should be rejected because the discussion merely restates well-settled law and Commission precedent upon which the Administrative Law Judges (ALJs) necessarily relied.

Section VII.C.2.a – Short-Term Incentive (STI) Compensation (OPUC)

- SWEPCO reduced its Test Year STI expense by $3,866,220, consistent with Commission precedent, by adjusting Test Year expense to the target level and removing the portion related to financial goals and half the portion of the funding measure related to financial goals, except for union compensation.

- The STI target amount used by SWEPCO is known and measurable, consistent with Commission precedent, and generally lower than actual STI amounts paid.

- The target amount was used by every witness in the case, including OPUC's own witness.

- OPUC's proposal to reduce collectively bargained STI expense would violate PURA § 14.006 by disallowing costs presumed reasonable by law and by interfering with a collective bargaining agreement.

Section VII.E.2 – Wind Contracts (TIEC)

- The cost of energy incurred under these contracts has been collected through SWEPCO's fuel factor and reconciled as energy purchases since their inception, starting with Docket No. 40443.

- As correctly noted in the PFD, "there has been ample opportunity for the Commission to reconsider the treatment of the contracts if it were inclined to do so."[1]

---

[1] Proposal for Decision (PFD) at 245-46.

Section VIII.B – ETSWD's Proposed COVID-19 Adjustment (ETSWD)

- East Texas Salt Water Disposal Company (ETSWD) has not provided and the evidentiary record does not contain the information necessary to implement the proposed Class Cost of Service Study (CCOSS) update.

- Any such update is not known and measurable because the effects of the COVID-19 pandemic are transitory.

- The proposed CCOSS update violates the matching principal.

Section IX.B.5 – TCGA's Class Allocation Issues (TCGA)

- Texas Cotton Ginners' Association (TCGA) makes untimely recommendations to adjust class cost allocation that amount to a request to reopen the record with new arguments and evidence to which SWEPCO and other parties have not been afforded the opportunity to respond.

- Based on the record, TCGA's proposed adjustments to class cost allocation will have unknown effects on other classes and cannot be shown to be more fair, equitable, or reasonable than SWEPCO's proposal, the methodology of which has previously been approved by the Commission.

- TCGA's proposals will result in different rates for different customers based on location within SWEPCO's service area, contradicting the Commission's long-standing policy of uniform, system-wide rates.

Section X – Revenue Distribution and Rate Design (Staff)

- Staff's four-year phase-in proposal has never been approved by or even proposed to the Commission for an electric utility.

- Staff's proposal is based on the unreasonable assumption that Test Year base-rate revenues will remain constant over the four-year phase-in period.

- SWEPCO's gradualism proposal recommended by the PFD will indisputably bring all classes closer to cost and is consistent with the Commission's order in SWEPCO's most recent prior rate case.

Section XIII.A – Additional Issues - Appeal of Docket No. 40443 (TIEC)

- It is improper for the Commission to consider the issue addressed in the Austin Court of Appeals opinion attached to TIEC's exceptions because the courts currently retain jurisdiction over the matter.

- SWEPCO and the Commission have jointly requested and been granted extensions of time to file their petitions for review at the Supreme Court of Texas.

- The Commission will not acquire jurisdiction over the matter until the appellate process is complete and a court issues a mandate ordering such a remand.

- Further, the calculations made by counsel for TIEC and attached to TIEC's exceptions are flawed and not based on the evidentiary record in the currently pending rate case.

V. RATE BASE/INVESTED CAPITAL

A. Transmission, Distribution, and Generation Capital Investment

2. Dolet Hills Power Station Retirement (OPUC)

The Dolet Hills plant is a lignite fueled generating plant. Lignite for the Dolet Hills plant is mined from adjacent lignite reserves. The Dolet Hills Lignite Company (DHLC), a wholly owned subsidiary of SWEPCO, mines and delivers lignite from reserves that are owned by the Oxbow Lignite Company (Oxbow), which is partly owned by SWEPCO. Through base rates, SWEPCO earns a ***return on*** its investment in DHLC and Oxbow.[2] The ***return of*** these investments, as well as the operating expenses of DHLC, are recovered through fuel costs billed to SWEPCO.[3] The PFD recommends these investments be removed from rate base and placed into the Dolet Hills Rate Rider, with a return provided on that investment until the Dolet Hills plant retires. The Office of Public Utility Counsel (OPUC) recommends the Dolet Hills Rate Rider exclude any return on the Oxbow mine investment and any recovery of the DHLC equity and taxes even before the retirement of the Dolet Hills plant.

The basis for OPUC's recommendation is the inaccurate statement that the "Oxbow mine and DHLC are no longer providing a benefit to rate payers that is not already taken into account in the lignite inventory to be included in the rate rider and any recovery of actual lignite used through the fuel factor."[4] While lignite production operations did cease in May 2020, DHLC continued to deliver lignite from the Oxbow reserves to the Dolet Hills plant in 2021 and was doing so when the rates to be set in this proceeding became effective in March of 2021.[5] In other words, SWEPCO continues to have invested capital in DHLC and Oxbow used and useful in

---

[2] Direct Testimony of Michael A. Baird, SWEPCO Ex. 6 at 37:1-8 and 47:12-15.

[3] Rebuttal Testimony of Michael A. Baird, SWEPCO Ex. 36 at 22:4-6.

[4] OPUC Exceptions at 2.

[5] SWEPCO Ex. 36 at 21:11-22:18.

providing service until all lignite has been delivered to the plant and burned to produce electricity. While the fuel inventory at the Dolet Hills plant will capture the ***return of*** these investments as an element of fuel cost, under OPUC's recommendation, SWEPCO would be denied a ***return on*** these investments while they are still providing value to customers. The PFD's reasoning on this question is sound:

> However, the ALJs have rejected OPUC's argument that both assets already ceased to be used and useful in providing service when further lignite extraction ended in May 2020. As Mr. Baird testified, both the Oxbow mine and DHLC have continued to provide benefit and will do so through the plant's final operations, as DHLC delivers and Dolet Hills burns already-mined lignite in generating electricity.[6]

4. New Generation Capital Investment (Sierra Club)

The exceptions of Sierra Club reflect the agenda of its organization. They do not reflect the evidentiary record in this case. Based on a series of mischaracterizations and false statements, Sierra Club urges the Commission to disallow the entirety of Test Year O&M incurred at three of SWEPCO's coal and lignite fueled power plants, as well as every dollar of capital invested in these plants during the Test Year. Sierra Club makes this far-fetched request even though its own witness did not challenge any individual O&M expenditure or investment at these plants as unreasonable or unnecessary or imprudent.

a. Dolet Hills Test-Year Investment

Sierra Club witness Devi Glick did not address ***any aspect*** of the O&M expenses incurred by SWEPCO at the Dolet Hills plant or any item of capital invested in the Dolet Hills plant. Therefore, there is no SWEPCO rebuttal testimony to refute the claims manufactured by Sierra Club's counsel after the close of the evidentiary record as it relates to Dolet Hills O&M expenses and capital investment. Sierra Club's tactics have denied SWEPCO the opportunity to provide testimony rebutting its allegations. However, as discussed below, much of the SWEPCO generation fleet information provided in this case, unchallenged by Sierra Club, pertains to the capital projects placed in service and O&M expenses incurred at the Dolet Hills plant. Sierra Club falsely claims that "the Company admittedly failed to submit *any analysis* demonstrating the prudence of 'each dollar' spent at the plant."[7] The cited basis for this false statement is SWEPCO's

---

[6] PFD at 57.

[7] Sierra Club Exceptions at 9 (emphasis in original).

observation made in its Reply Brief, and repeated above, that Sierra Club's ambush litigation tactics have denied SWEPCO, Staff, and any other interested party the ability to respond with rebuttal evidence.

In addressing Sierra Club's tactics, the PFD correctly recognizes that the Commission has drawn a distinction between the burden of persuasion and the burden of production in utility rate cases. The ALJs wrote, "But while the ultimate burden of persuasion on the issue of prudence remains with the utility, its initial burden of production (i.e., to come forward with evidence) is shifted to opponents if the utility establishes a *prima facie* case of prudence."[8] The Commission has explained the purpose of this distinction and explained that it was:

> specially crafted by the Commission to aid in the trial of utility prudence reviews. It is a tool to assist in conducting efficient hearings. It is crafted to accommodate the voluminous, highly technical evidence required to establish the prudence of investment in electric power plants. The Commission's *prima facie* procedure allows the utility to establish the prudence by introducing evidence that is comprehensive, but short of proof of the prudence of every bolt, washer, pipe hanger, cable tray, I-beam, or concrete pour.[9]

The PFD also discusses the evidence that was presented and unchallenged by Sierra Club. That evidence includes Rate Filing Package Schedule H-5.2b. Schedule H-5.2b provides a list of every capital project with a value of greater than $100,000 placed in service since the close of the previous rate case test year through the end of the Test Year in this case, including those capital projects placed in service at the Dolet Hills plant.[10] This schedule provides a description of the reasons for the capital investment, which reasons include (1) Immediate Personnel Safety Requirement, (2) Regulatory Safety of Operations Requirement, (3) Regulatory Commitment, (4) Plant Efficiency Improvement, (5) New Building, (6) Productivity Improvement, (7) Reliability, (8) Economic, (9) Habitability, and (10) Other. The schedule also indicates whether a cost/benefit analysis was done for the project, which was done for a large majority of the projects. Sierra Club's witness did not challenge any of these projects, nor did Sierra Club seek any discovery regarding these projects or cost/benefit analyses thereof. Sierra Club now

---

[8] PFD at 64-65 (emphasis omitted).

[9] *Entergy Gulf States, Inc. v. Public Utility Commission*, 112 S.W.3d 208, 214 at n. 5 (Tex. App—Austin 2003, pet. denied).

[10] RFP Schedules & Workpapers, SWEPCO Ex. 1 at Schedule H-5.2b.

complains that the cost/benefit analyses themselves were not included in SWEPCO's rate filing package.[11] However, the salient points are that the analyses were done, the Commission's rate filing package instructions do not instruct the utility to include them, and, although available to Sierra Club, it made no effort to examine them.

Regarding O&M costs incurred at SWEPCO's generation plants during the Test Year, Schedule H-1.2 provides a description of the O&M expenses incurred, by FERC Account and by plant (including the Dolet Hills plant), for each month of the Test Year. The fact is that, from 2017 to the Test Year, SWEPCO's generating fleet O&M expense (including that incurred at the Dolet Hills plant) decreased from approximately $136 million to approximately $130 million.[12]

The Dolet Hills plant is a co-owned generation plant, and co-owner Cleco Power, LLC (CLECO) is responsible for the operation and maintenance of the plant.[13] Sierra Club implies that SWEPCO is somehow deficient in relying on plant operator CLECO in this regard and that SWEPCO had no visibility into the expenditures made at the Dolet Hills plant. These implications are untrue. Sierra Club accuses the ALJs of "mischaracterizing" the testimony of SWEPCO Vice President for Generation Assets, Monte McMahon.[14] To the contrary, Sierra Club does the mischaracterizing. When asked whether the Company reduced expenditures at the Dolet Hills plant after the decision to retire the plant, Mr. McMahon made it clear that he was aware of those expenditures and believed them to be prudent:

> Well, by reference to the Company, I suppose you mean SWEPCO, and it's important to point out, I think, like Mr. Brice said and others, that we're not the operator of Dolet Hills. That's CLECO. However, you know, a certain amount of ongoing O&M and capital is going to be required to get that plant safely and reliably to the end of the year.[15]

Sierra Club makes the false accusation that SWEPCO "simply passively deferred those [expenditure] decisions to Cleco."[16] While it is correct that CLECO is directly responsible for

---

[11] Sierra Club Exceptions at 10.

[12] Direct Testimony of Monte A. McMahon, SWEPCO Ex. 7 at 24:1-9.

[13] SWEPCO Ex. 7 at 5:13-22.

[14] Sierra Club Exceptions at 12.

[15] Tr. at 158:25-159:6 (McMahon Cross) (May 19, 2021).

[16] Sierra Club Exceptions at 16.

expenditure decisions at the Dolet Hills plant, Mr. McMahon made it clear that SWEPCO actively monitors those decisions:

> However, through, you know, communications with plant management and others at CLECO, I do believe that they have aligned their future O&M spend and their planned capital spend in a manner that will safely and compliantly get that unit to end of life.
>
> * * *
>
> Well, we -- you know, we certainly have opportunities to offer our input and feedback, but ultimately, it's the operator's decision on how to deploy that funding.
>
> * * *
>
> Well, again, I -- you know, the plant is scheduled to run to the end of the year. And so, you know, looking back historically, I believe they have the appropriate level of O&M in their forecast. And so, you know, I -- at this point I would not expect that to trail off. They have to keep that facility available, again, to the end of this year and reliable and operational.[17]

The Commission addressed this relationship between SWEPCO and CLECO in SWEPCO's most recent base rate case. In that case, over the objection of Sierra Club, the Commission found that retrofitting the Dolet Hills plant to comply with emerging environmental regulations was prudent, as was SWEPCO's reliance on CLECO in the decision-making process:

> In particular, the Commission finds it important that Mr. Franklin relied upon the study performed for the majority owner of the power plant, Cleco Power LLC (Cleco). . . . Cleco owns 50% of the Dolet Hills power plant and is responsible for the operations and maintenance of the plant. As such, Cleco has the obligation to make all repairs, replacements, and capital additions to the plant. However, Cleco is required to consult with SWEPCO's operating committee representative in making major decisions. Further, the business relationship between Cleco and SWEPCO related to Dolet Hills had been ongoing since at least 1981, or for more than 30 years, at the time of the decision to retrofit the power plant. Over those years, SWEPCO had collaborated with Cleco in its management role on the operations and maintenance of the power plant and all capital improvements. The Commission finds it is reasonable for SWEPCO to have had confidence in this longstanding relationship as part of its decision-making process as to the retrofits.[18]

b. Flint Creek and Welsh Test-Year Investment

Sierra Club recommends the Commission disallow all O&M expenses associated with

---

[17] Tr. at 159:12-160:16 (McMahon Cross) (May 19, 2021).

[18] *Application of Southwestern Electric Power Company for Authority to Change Rates,* Docket No. 46449, Order on Rehearing at 2 (Mar. 19, 2018).

SWEPCO's coal-fired Flint Creek and Welsh power plants, as well as all capital invested in those plants during the Test Year to enable their continued safe and reliable operations. Yet, Sierra Club witness Ms. Glick challenged no individual O&M or capital expenditure at these two plants. Making the same claim it made regarding the Dolet Hills plant (including the misspelling in the claim), Sierra Club writes, "the Proposal for Decision approves all of SWEPCO's proposed test year spending at Flint Creek and Welsh without any evidence supporting apporval [sic]."[19] Sierra Club ignores or discounts all the evidence presented by SWEPCO regarding the Company's prudent management of the capital investment made in and O&M expense incurred for SWEPCO's generation fleet, including the Flint Creek and Welsh plants, none of which did the Sierra Club witness challenge.

SWEPCO is the operator of the Flint Creek and Welsh plants. The uncontested evidence demonstrates that SWEPCO regularly reviews capital projects that could provide economic, environmental, reliability, or safety-related benefits to SWEPCO's generating fleet. The first step in any capital addition evaluation is to research alternatives that may exist, and when warranted, to perform cost-benefit analyses to estimate a project's value.[20] Further, SWEPCO uses multiple processes to ensure its generation O&M expenses are reasonable. These include the use of budget controls, the review of cost trends, and careful tracking of staffing levels at its power plants.[21] Sierra Club does not challenge any specific capital project placed in service at the Flint Creek and Welsh plants. Sierra Club does not challenge any specific component of the generation O&M expense incurred at these plants during the Test Year. Instead, Sierra Club urges the Commission to disallow all O&M expense incurred and every capital investment placed in service during the Test Year at these two plants.

As noted above, Rate Filing Package Schedule H-5.2b provides a list of every capital project with a value of greater than $100,000 placed in service since the close of the previous rate case test year through the end of the Test Year in this case, including those capital projects placed in service at the Flint Creek and Welsh.[22] This schedule provides a description of the reason for

---

[19] Sierra Club Exceptions at 19.

[20] SWEPCO Ex. 7 at 17:11-24.

[21] SWEPCO Ex. 7 at 21:11-15.

[22] SWEPCO Ex. 1 at Schedule H-5.2b.

the capital investment, and whether a cost/benefit analysis was done for the project, which was done for a large majority of the projects. As previously mentioned, Sierra Club's witness did not challenge any of these projects, nor did Sierra Club seek any discovery regarding the purpose of these projects or cost/benefit analyses thereof.

As explained in the direct testimony of SWEPCO witness Mr. McMahon, the first step in any capital addition evaluation is to research alternatives that may exist, and when warranted, to perform cost-benefit analyses to estimate a project's value. Once the need for a capital project is determined, the most efficient way to manage the project is selected. This can mean that a project is expedited or sole-sourced if there is a lack of competition for a given piece of equipment or service. However, the typical practice is to competitively bid capital projects to ensure that a fair market price is paid for the good or service. After a competitive bid is accepted, contracts are finalized and the project is executed.[23]

As noted above, regarding O&M expense incurred at SWEPCO's generation plants during the Test Year, Schedule H-1.2 provides a description of the O&M expenses incurred, by FERC Account and by plant (including the Flint Creek and Welsh plants), for each month of the Test Year. Schedule H-3 provides historical SWEPCO generation O&M expenses, by FERC Account and by year, since 2015. Schedule H-4 provides the major O&M projects undertaken during the Test Year by plant. Sierra Club's witness did not challenge any component of SWEPCO's Test Year O&M expenses or even seek any discovery about them.

As explained in the direct testimony of Mr. McMahon, O&M budgets are scrutinized on an annual basis to ensure that they are reasonable. Expenditures throughout the year are tracked and projected on a monthly basis. In addition, SWEPCO seeks competitive bids for materials and services when it is reasonable to do so. Another method of measuring the reasonableness of SWEPCO's generating fleet O&M expenses is to compare them to past years, ensuring that SWEPCO is not setting its costs at unreasonably high or low levels. This same approach is used to ensure staffing levels at SWEPCO's generating plants are reasonable.[24]

As noted above, from 2017 to the Test Year, SWEPCO's generating fleet O&M expense (including that incurred at the Flint Creek and Welsh plants) decreased from approximately

---

[23] SWEPCO Ex. 7 at 17:11-24.

[24] SWEPCO Ex. 7 at 21:11-22:15.

$136 million to approximately $130 million.[25] Further, the O&M expenses incurred at the Flint Creek and Welsh plants provided positive results for customers. The Flint Creek and Welsh plants outperformed similarly sized coal-fired units when compared on an Equivalent Availability Factor (EAF) and Equivalent Forced Outage Rate (EFOR) basis.[26]

What Sierra Club appears to be demanding is that SWEPCO conduct a run versus retire (unit disposition) analysis before making any continuing capital investments necessary for a unit to run efficiently and safely or incurring any O&M expenditure needed to make the unit run on a daily basis for the benefit of customers.[27] Sierra Club's demand is unreasonable and ignores the reasonable continuing analysis of its generating fleet that SWEPCO has demonstrated in this case. In SWEPCO's previous Texas base rate case, Docket No. 46449, SWEPCO presented several unit disposition analyses that studied the economics of retiring or retrofitting the Flint Creek and Welsh plants (and other units) to comply with then-emerging environmental regulations, thereby enabling the continued operation of those plants. These unit disposition analyses compared retirement versus retrofit and continued operation on a Cumulative Present Worth of annual Revenue Requirements (CPWRR) basis. In Docket No. 46449, the Commission determined these analyses were robust and reasonable and found that retrofitting the units was the better path forward for SWEPCO and its customers:

> The economic evaluations that informed SWEPCO's decision to retrofit Flint Creek, Pirkey, and Welsh units 1 and 3 were robust. These analyses were tested under several sets of input assumptions. The analyses indicated that retrofitting the units was the better path forward for SWEPCO and its customers.[28]

Since that time, SWEPCO has operated the Flint Creek and Welsh plants to the benefit of customers. In fact, over the years 2016 through 2020, the revenues from sales from the Welsh units 1 and 3 and the Flint Creek generation units were $196 million in excess of the variable costs

---

[25] SWEPCO Ex. 7 at 24:1-9.

[26] SWEPCO Ex. 7 at 33:19-34:7.

[27] "Sierra Club is not challenging the *level* of O&M spending for Flint Creek or Welsh, but whether *any* of this O&M is prudent given the lack of showing that the plants should be maintained in operation at all." Sierra Club Exceptions at 24-25 (emphasis in original).

[28] Docket No. 46449, Order on Rehearing at Finding of Fact (FoF) No. 48.

of operating those units.[29] Sierra Club falsely states, "SWEPCO indisputably did not offer evidence of the economics of these plants."[30] To the contrary, the facts demonstrate that SWEPCO reasonably made the capital investments necessary to ensure the safe and efficient operation of the Flint Creek and Welsh plants and incurred the O&M expenses necessary to make operation of the plants possible and generate $196 million in customer benefits.

Sierra Club claims that its witness Ms. Glick "shows that these plants [Flint Creek and Welsh] have been and will be for the next decade, high cost resources compared to alternatives."[31] This statement is false. In truth, Ms. Glick's analysis failed to consider the cost to customers of alternative resources if the Flint Creek and Welsh plants were retired. Specifically, her analysis completely omits any consideration of the costs that SWEPCO will incur to serve customers without these plants. Therefore, Ms. Glick's allegation is flawed because it considers only one side of the analysis – where the plants continue to operate – and fails to consider the cost to customers of a scenario where the plants are retired and replacement energy and capacity costs are incurred. Her analysis does not constitute a unit disposition analysis that studies the costs to serve customers with a unit's retirement versus the costs to serve customers with a unit's retrofit and continued operation.[32]

The analyses that Ms. Glick did offer were further flawed. Ms. Glick alleged that the Flint Creek and Welsh plants had incurred "net losses" historically and were projected to do so into the future. Ms. Glick's analysis is able to manufacture historical net losses only by including in her calculations the entire capital investment made by SWEPCO to enable operation of the plant for years into the future and expensing that capital investment in the year made. This is inaccurate and is inconsistent with how SWEPCO recovers the cost of capital investments from customers over the expected life of the capital investment.[33] It is also important to note that much of the capital investment that Ms. Glick uses to manufacture historical net losses was reviewed by the

---

[29] Rebuttal Testimony of Jason Stegall, SWEPCO Ex. 47 at 3:16-4:15.

[30] Sierra Club Exceptions at 21.

[31] Sierra Club Exceptions at 20-21.

[32] Rebuttal Testimony of Mark A. Becker, SWEPCO Ex. 48 at 7:5-21.

[33] SWEPCO Ex. 48 at 3:9-4:6.

Commission, found to be prudent, and placed into SWEPCO's rate base in Docket No. 46449.[34] Specifically, Ms. Glick's historical analysis of the Flint Creek and Welsh plants incorporates hundreds of millions of dollars of environmental compliance capital investment already found to be prudent by the Commission. Only by expensing in one year the hundreds of millions of dollars of environmental compliance capital investment made in 2015 and 2016 can Ms. Glick's calculation arrive at the losses she alleges for the years 2015 through 2020.[35]

Ms. Glick's allegation that SWEPCO projects net losses at the Flint Creek and Welsh plants is also inaccurate.[36] Ms. Glick's forward-looking analysis is simply an extension of her historical analysis and includes the same flaws, including the expensing of capital investment in the year made, along with all fuel and O&M costs, and comparing all of these expenditures to projected revenues.[37] Further, Ms. Glick's projected analysis of the Flint Creek plant extends only through 2030. However, by retrofitting the Flint Creek plant to be compliant with Coal Combustion Residuals (CCR) and Effluent Limitation Guidelines (ELG), SWEPCO will have enabled the plant to operate through its currently anticipated retirement date in 2038. Therefore, in addition to the flaws noted above, Ms. Glick's analysis ignores nearly half of Flint Creek's expected remaining useful life if retrofitted to comply with CCR and ELG.[38]

Ms. Glick's projected analysis of the Flint Creek plant is further flawed in that it does not account for the significant investment in transmission assets that would be required to support a retirement of Flint Creek. Due to transmission system constraints in northwest Arkansas, if the Flint Creek plant were to be retired, extensive transmission construction would be required to maintain system reliability. Ms. Glick acknowledges this fact and a generation retirement study cited by Ms. Glick in her testimony states "Another 345 kV line from a remote source into the NW

---

[34] SWEPCO Ex. 48 at 5:16-6:2.

[35] SWEPCO Ex. 48 at 6:17-7:4.

[36] This allegation is apparently the basis for Sierra Club's claim that it "presented evidence demonstrating that continued operation of the Flint Creek and Welsh units is likely to harm Texas customers." Sierra Club Exceptions at 26.

[37] SWEPCO Ex. 48 at 7:5-21.

[38] SWEPCO Ex. 48 at 8:12-18.

Arkansas area, such as Fort Smith-Chamber Springs or a similar line, would be needed."[39] The cost of such an extensive transmission upgrade would be substantial, estimated at $150 million.[40]

c. Additional Investment

i. Additional Investment: Flint Creek ELG/CCR Retrofit

Sierra Club excepts to the PFD and requests the Commission "remand and direct the ALJs to conduct further proceedings"[41] to evaluate the prudence of SWEPCO's decision to retrofit Flint Creek to meet ELG and CCR compliance requirements – an issue determined to be beyond the scope of this proceeding.[42] Sierra Club contends the Commission's broad regulatory authority and discretion support its request but notably makes no argument as to why its prudence challenge is relevant to the issues before the Commission in this case.[43] The Commission should reject Sierra Club's exceptions regarding this thoroughly litigated and properly decided issue.[44]

The ALJs granted SWEPCO's motion to strike a section of Sierra Club witness Ms. Glick's testimony directed to the prudence of SWEPCO's decision to retrofit the Flint Creek plant and related investments.[45] The ALJs determined that Sierra Club's prudence challenge was irrelevant

---

[39] Highly Sensitive Direct Testimony of Devi Glick, Sierra Club Ex. 1A at 169 (Bates 000011) using the page number in the bottom right-hand corner of the page.

[40] SWEPCO Ex. 48 at 8:1-11.

[41] Sierra Club Exceptions to the PFD at 32.

[42] PFD at 75 (discussing Sierra Club's challenge to "spending that SWEPCO has not sought to include in rates").

[43] Sierra Club highlights the Commission's authority to right to control its own docket. *See* Sierra Club's Exceptions at 36, n. 95. This point supports the PFD's decisions, consistent with the Commission's regulations concerning CWIP, see 16 Tex. Admin. Code § 25.231 (c)(2)(D) (TAC), SWEPCO's requests for relief in this case, and the ALJs' recognition that the prudence of these costs will be examined in a future proceeding. PFD at 75-76; *see also* SOAH Order No. 12 at 3 (addressing arguments regarding the Commission's authority to regulate and supervise SWEPCO's planning and investments).

[44] A trial judge's decision to admit or exclude evidence is reviewed for abuse of discretion. *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 906 (Tex. 2000). Appellate courts uphold such rulings where there is "any legitimate basis" for the ruling. *Carbonara v. Tex. Stadium Corp.*, 244 S.W.3d 651, 655 (Tex. App.—Dallas 2008, no pet.) (citing *Owens–Corning Fiberglas Corp. v. Malone*, 972 S.W.2d 35, 43 (Tex. 1998)). An abuse of discretion arises when a judge "makes a decision without reference to any guiding rules or principles." *Id.* (citing *Garcia v. Martinez*, 988 S.W.2d 219, 222 (Tex. 1999)). Nowhere in its exceptions does Sierra Club attempt to establish the ALJs' determinations constituted an abuse of discretion in excluding this issue as beyond the scope of the proceeding.

[45] PFD at 75-76; SOAH Order No. 7 Granting Leave to File Surreply; Granting Objection and Motion to Strike a Section of Sierra Club's Direct Testimony at 4-5 (Apr. 27, 2021).

and beyond the scope of this proceeding.[46] As the Test Year upon which SWEPCO's application and requested relief is based ended March 31, 2020, none of the capital investment Sierra Club addressed in its testimony concerning the prudence of the Flint Creek retrofit is included in SWEPCO's rate base—nor is any of this investment being reviewed in this case.[47]

Importantly, the ALJs confirmed that the challenged costs constitute Construction Work In Progress (CWIP), as demonstrated in the Company's Rate Package Filing Schedules.[48] During the hearing, multiple witnesses similarly confirmed that SWEPCO is not seeking to include these costs in the rates approved in this proceeding.[49] It is not the case that "ALJs refused to examine the prudence of that investment decision because the Company chose not to include those costs in 'the rates to be approved in this proceeding.'"[50] Rather, the ALJs properly recognized the issue concerning the decision to retrofit Flint Creek was not relevant to this base rate case and that Sierra Club may raise its prudence challenge "in a future case in which that issue is properly before the Commission."[51] Accordingly, Sierra Club's contention that the PFD "creates a higher risk that customers will be saddled with costs that the Commission might later deem imprudent" is simply unfounded.[52]

Sierra Club provides no basis for reversing the ALJ's prior determination on this issue. Despite expressing general disagreement, Sierra Club has not shown the ALJ's rulings on this

---

[46] *See* PFD at 75-76; SOAH Order No. 7 at 5 (deciding "Sierra Club's prudence challenge to the Flint Creek retrofit is not ripe for consideration in this case"); *see also* SOAH Order No. 12 Denying Motion for Reconsideration of SOAH Order No. 7; Denying Motion to Compel at 3 (May 17, 2021). No Commissioner voted to add Sierra Club's appeal to an open meeting agenda. Commission Advising memorandum (May 13, 2021).

[47] SOAH Order No. 7 at 4-5 ("SWEPCO is not seeking to recover, and will not be allowed to recover, any Flint Creek retrofit costs in this case."). The decision to retrofit the Flint Creek plant was not made during the test year. *Id.* at 5 (noting "decision was made well after the close of the test year" such that it is incorrect to "suggest that the timing of the retrofit decision . . . somehow makes the prudence of the decision relevant to this base rate case").

[48] SOAH Order No. 7 at 3-5 & n. 7 (explaining rate base consists only of items that are used and useful in providing service and noting that SWEPCO had not sought to include CWIP, an exceptional form of rate relief in this case). Sierra Club nevertheless relies on the Commission's general regulatory authority and urges the Commission to conduct in this case a prudence review of the challenged costs "even before those costs are incurred." Sierra Club Exceptions at 34 n. 90.

[49] *See* PFD at 75 (citing Tr. at 84-85, 123-24, and 156-58).

[50] Sierra Club Exceptions at 32.

[51] SOAH Order No. 7 at 6.

[52] Sierra Club Exceptions at 35.

issue are erroneous or an abuse of discretion.[53] The Commission should affirm the ALJs evidentiary rulings on this issue and reject Sierra Club's request for further proceedings.[54]

ii. Additional Investment: Potential Natural Gas Conversion of Welsh

SWEPCO has announced that the Welsh plant will cease coal-fired operations in 2028 in light of the CCR/ELG requirements. SWEPCO has begun to study but has made no final determination regarding whether natural gas conversion of the Welsh plant is in customers' best interest. If SWEPCO were to make a firm decision to convert the Welsh plant to run on natural gas, that decision would be subject to review in a future Commission proceeding. As such, a potential future conversion of the Welsh plant to run on natural gas is beyond the scope of this current rate case, and the ALJs were correct in so finding.

The PFD explains that Sierra Club seeks to have the Commission "supervise" SWEPCO's resource planning decisions.[55] In hopes of supporting this request, Sierra Club alleges that SWEPCO has managed its coal-fired generation plants "often with scant documentation of its contemporaneous decision-making."[56] This allegation amounts to nothing more than Sierra Club's disagreement with Commission determinations of prudence surrounding SWEPCO's management of its solid fuel generation units. Sierra Club quotes the Docket No. 46449 PFD for the proposition that SWEPCO's contemporaneous documentation of its 2012-13 retrofit of the Dolet Hills plant to comply with environmental regulations was inadequate.[57] However, the Commission expressly

---

[53] The supplemental authority submitted in Sierra Club's August 9, 2021 letter filing provides no basis to reverse the ALJs rulings and is inapplicable to the rates being set in this case. The ALJs properly declined to consider it. PFD at 76, n. 336; *see also* SWEPCO Letter Response (Aug. 16, 2021).

[54] "The purpose of the offer of proof is to allow a reviewing court an opportunity to review the excluded evidence and determine whether an appropriate evidentiary ruling was made." *Application of Texas-New Mexico Power Company for Authority to Change Rates, Petition of Texas-New Mexico Power Company for Approval of Deferred Accounting Treatment for TNP One, Unit 2*, Docket Nos. 10200 and 10034, Examiner's Order No. 49 at 2 (Dec. 2, 1991); *see also Jones v. Mattress Firm Holding Corp.*, 558 S.W.3d 732, 735 (Tex. App.—Houston [14th Dist.] 2018, no pet.) (citing Tex. R. Evid. 103(a)(2)).

[55] PFD at 76.

[56] Sierra Club Exceptions at 37.

[57] Sierra Club Exceptions at 37, n. 98.

rejected that finding.[58] Further, in that case, both the ALJs and the Commission found SWEPCO's retrofit of the Dolet Hills plant was prudent.[59] Sierra Club also cites a court of appeals decision regarding SWEPCO's decision to complete its coal-fired Turk power plant.[60] The Supreme Court of Texas reversed that decision and wrote, "[we] hold that the Commission properly applied its standard in evaluating SWEPCO's decision to complete construction and substantial evidence supports the Commission's decision."[61] Sierra Club has not demonstrated poor management decisions regarding SWEPCO's coal-fired generation units. Instead, Sierra Club has demonstrated its disagreement with the Commission's review of that management.

Pursuant to statute and Commission rule, the Commission does require fully integrated utilities like SWEPCO to obtain Commission authorization to either purchase or construct a new generation facility (a Certificate of Convenience and Necessity).[62] However, Sierra Club has not supported its request for the Commission to expand that authority to the "supervision" of SWEPCO's coal-fired generation units.

VI. RATE OF RETURN

A. Return on Equity (CARD and TIEC)

The PFD recommends the Commission authorize a Return on Equity (ROE) of 9.45% for SWEPCO.[63] In its exceptions to the PFD, SWEPCO urges the Commission to authorize a ROE no lower than 9.6%, which is the midpoint of the revised range of all the testifying experts' recommendations combined after excluding certain analyses identified by the ALJs in the PFD (9% to 10.2%).[64] An authorized ROE of 9.6% is also consistent with the average authorized ROEs

---

[58] Docket No. 46449, Order on Rehearing at 2 ("The Commission disagrees with and therefore does not adopt the SOAH ALJs' finding that SWEPCO failed to meet its burden of proof through its contemporaneous analysis of the Dolet Hills investment.").

[59] Docket No. 46449, PFD at FoF No. 36 (Sept. 22, 2017); Docket 46449, Order on Rehearing at 2-5 and FoF Nos. 30A-30V.

[60] Sierra Club Exceptions at 37, n. 97.

[61] *Public Utility Comm'n v. Texas Industrial Energy Consumers,* 620 S.W.3d 418, 422 (Tex. 2021).

[62] Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 37.053, .37.058; (PURA) and16 TAC § 25.101.

[63] PFD at 103.

[64] SWEPCO Exceptions at 38-39.

for the entities included in the experts' proxy groups (average range of 9.51 – 9.62).[65]

TIEC and CARD also filed exceptions to the PFD-recommended ROE of 9.45%. However, these parties argue that the Commission should authorize a lower ROE than the PFD recommendation. TIEC argues that the ROE for SWEPCO should be 9.15% based on the recommendation of TIEC witness Michael Gorman.[66] CARD likewise continues to argue for their initial ROE recommendation of 9.0% based on the testimony of CARD witness J. Randall Woolridge.[67] Both TIEC and CARD advocate for an authorized ROE at the absolute low end of the PFD's recommended range (9% to 9.9%)[68] without regard for any of the other expert analyses.

Staff does not challenge the PFD's recommended ROE of 9.45%, but continues to argue that SWEPCO's authorized ROE should be reduced by 12.5 basis points because of the August 2019 outage.[69] SWEPCO addresses Staff's arguments in more detail in section VI.A.7 below. No other party filed exceptions on the ROE issue.

In support of their exceptions, TIEC and CARD argue that the PFD-recommended 9.45% ROE is excessive due to current market conditions, including lower interest rates.[70] TIEC further suggests that a "downward trend" in authorized ROEs across the nation supports a lower ROE for SWEPCO in this rate case.[71] CARD also challenges the use of projected earnings per share (EPS) growth rates for electric utilities.[72] SWEPCO respectfully disagrees and urges the Commission to deny the exceptions filed by TIEC and CARD advocating for an even lower ROE than that recommended by the PFD.

---

65 SWEPCO Exceptions at 40.

66 TIEC Exceptions at 4.

67 CARD Exceptions at 4.

68 PFD at 146.

69 Staff Exceptions at 3.

70 TIEC Exceptions at 5-6; CARD Exceptions at 6.

71 TIEC Exceptions at 6-7.

72 CARD Exceptions at 5.

1. *Hope* and *Bluefield* Standard

Neither TIEC nor CARD address or apply the *Hope* and *Bluefield*[73] standard that the PFD rightfully cites.[74] According to the United States Supreme Court, there is a minimum constitutional standard governing equity returns for utility investors. This longstanding precedent establishes that a utility must have a reasonable opportunity to: 1) earn a return commensurate with investments of comparable risk, 2) ensure financial soundness, and 3) attract capital at reasonable rates. TIEC's 9.15% ROE recommendation and CARD's 9.0% ROE recommendation are significantly below the currently authorized returns of other utilities in Texas, both fully integrated utilities like SWEPCO and transmission and distribution utilities:

Authorized Returns for Texas Utilities 2017 to 2021[75]

Utility	Case ID	Authorization Date	Authorized ROE
Oncor Electric Delivery Co.	46957	September 28, 2017	9.8
El Paso Electric Co.	46831	December 14, 2017	9.65
Texas-New Mexico Power Co.	48401	December 20, 2018	9.65
Entergy Texas, Inc.	48371	December 20, 2018	9.65[76]
Centerpoint Energy	49421	February 14, 2020	9.4
AEP Texas, Inc.	49494	February 27, 2020	9.4
Southwestern Public Service Co.	49831	August 27, 2020	9.45

If the Commission were to adopt TIEC's or CARD's ROE recommendations, SWEPCO would not be able to earn a return comparable with its peers in Texas. SWEPCO necessarily

---

[73] *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *see also Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n of W.Va.*, 262 U.S. 679, 692-93 (1923).

[74] PFD at 102.

[75] Direct Testimony of Lisa V. Perry at Walmart Ex. 1, Exhibit LVP-3 (Reported Authorized Returns on Equity, Electric Utility Rate Cases Completed, 2017 to Present).

[76] *See Entergy Texas, Inc.'s Application for and Authority to Change Rates*, Docket No. 48371, Final Order at Findings of Fact Nos. 47-51 and Ordering Paragraph Nos. 9 and 10 (December 20, 2018).

competes for utility investment dollars with these entities. Moreover, the average authorized ROE for vertically integrated utilities (like SWEPCO) across the country for the years 2017 through 2020 was 9.69%.[77] TIEC's and CARD's ROE recommendations are extremely low and unreasonable compared to these other vertically integrated utilities. Adopting TIEC's or CARD's ROE recommendations would contravene the *Hope* and *Bluefield* standard established by the United States Supreme Court.

2. Market Conditions

In their exceptions, TIEC and CARD argue that the PFD recommended 9.45% ROE is too high considering current market conditions. TIEC cites low interest rates, a declining trend in authorized ROEs, and lower risk due to regulatory recovery mechanisms in support of its recommended ROE of 9.15%.[78] CARD also points to low interest rates in support of its 9.0% ROE recommendation.[79] CARD further criticizes the use of projected EPS growth rates by the other expert witnesses.[80] These arguments are not new. SWEPCO responded to these arguments in its Reply Brief, and the PFD rightfully rejected reliance on only one party's expert in setting the ROE for SWEPCO. That is, these factors are already included in the PFD's recommendation. TIEC and CARD have not offered anything new to consider.

Interest Rates

Notwithstanding the fact that the PFD's ROE recommendation already includes these factors, TIEC and CARD are wrong. Low interest rates only tell one part of the story. TIEC and CARD take a very narrow view of capital markets. SWEPCO witness Mr. D'Ascendis, on the other hand, takes a broader and more encompassing view of capital markets by looking at interest rates, volatility indices, and both near-term and long-term economic projections.[81] As interest rates drop, there is increased volatility in the market. When this happens, risk averse investors move to

---

[77] Walmart Ex. 1 at Exhibit LVP-3.

[78] TIEC Exceptions at 4-5.

[79] CARD Exceptions at 6.

[80] CARD Exceptions at 5.

[81] Direct Testimony of Dylan D'Ascendis, SWEPCO Ex. 8 at 8-13.

Treasury securities.[82] Dr. Woolridge even agrees that this happened in 2020.[83] Those investors that remain in the market require a higher return in response to the increased risk. This market phenomenon is apparent from the evidence submitted in this proceeding.[84] As instances of extreme volatility subside, interest rates begin to recover and increase. That is, there is an inverse relationship between extreme changes in volatility and extreme changes in interest rates.[85]

TIEC and CARD tie low interest rates to lower authorized ROEs during a declining trend, but fail to apply that same approach when interest rates are increasing. On the stand, Dr. Woolridge was asked to compare the 9.45% Commission-authorized ROE for Southwestern Public Service Company (SPS) in 2020 when the 30-year Treasury yield was about 1.45%.[86] Between then and the hearing, interest rates increased to approximately 2.29%.[87] It follows then, based on CARD's and TIEC's reasoning, that SWEPCO's Commission authorized ROE should be higher than SPS' authorized ROE, given that interest rates increased by 58%. According to CARD and TIEC, it is proper to consider interest rates on the way down, but not on the way up. Certainly, even an unequal relationship between interest rates and Commission-authorized ROEs would not support a 9.0% or a 9.15% ROE as advocated by CARD and TIEC.

Trend in Authorized ROEs

TIEC and CARD also argue that a declining "trend" in authorized ROEs across the country supports a lower ROE for SWEPCO in this rate case.[88] However, taking out 2020, which both Mr. Gorman and Dr. Woolridge agree is an outlier year,[89] there is no discernible trend downward in authorized ROEs approved by regulating agencies. CARD's own evidence bears this out:[90]

---

82 Rebuttal Testimony of Dylan D'Ascendis, SWEPCO Ex. 38 at 11:8-12:2.

83 Tr. at 1002:9-11 (Woolridge Redirect) (May 24, 2021).

84 SWEPCO Ex. 38 at 11:8-12:2.

85 SWEPCO Ex. 38 at 12, Chart 1.

86 Tr. at 993:2-15 and 996:4-997:1-15 (Woolridge Cross) (May 24, 2021).

87 Tr. at 993:2-15 and 996:4-997:1-15 (Woolridge Cross) (May 24, 2021).

88 CARD Initial Brief at 16-17; TIEC Initial Brief at 19-20.

89 Tr. at 987:4-18 (Woolridge Cross); 1013:7-20 (Gorman Cross) (May 24, 2021).

90 Direct Testimony of J. Randall Woolridge, CARD Ex. 4 at 13:4-13 (using the page number in the bottom center of the page).

Year	Average ROE
2014	9.76%
2015	9.58%
2016	9.60%
2017	9.68%
2018	9.58%
2019	9.65%

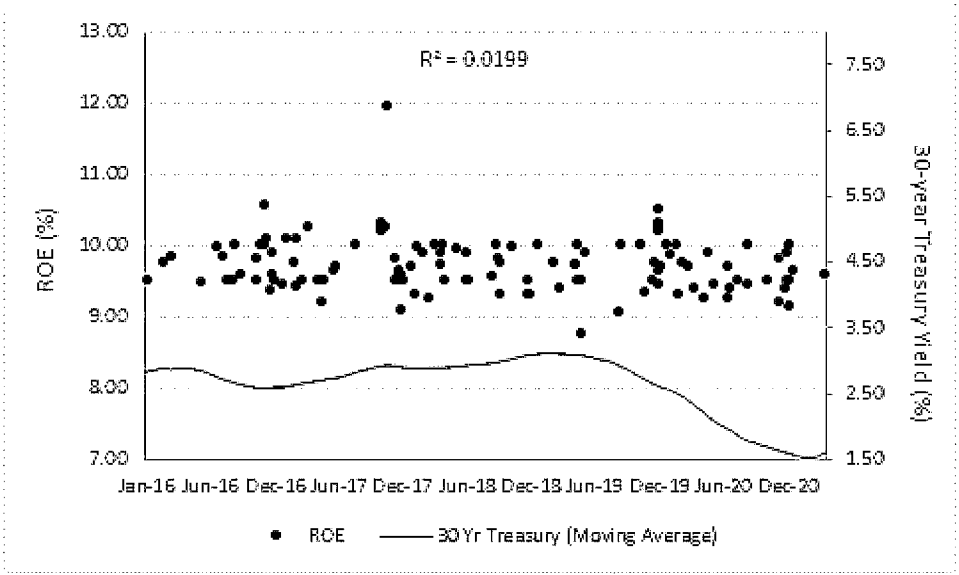
There is no "declining trend" in authorized ROEs. Even the opposing parties' witnesses admitted on cross-examination that authorized ROEs have been stable from 2014 – 2019.[91] 2020 was an outlier year due to COVID-19.[92] When charting individual ROEs, rather than annual averages, the data clearly shows there is no meaningful downward trend since 2016.[93]

[91] Tr. at 989:2-6 (Woolridge Cross); 1013:7-20 (Gorman Cross); 1054:20-1055:8 (Filarowicz Cross) (May 24, 2021).

[92] Tr. at 987:4-18 (Woolridge Cross); 1013:7-20 (Gorman Cross) (May 24, 2021).

[93] SWEPCO Ex. 38 at 53:3-12.

Authorized Returns for Gas and Electric Utilities (2016-2021)[94]



Moreover, there is no statistical difference in the averages over the past six years.[95] If anything, the data regarding historical ROEs shows to the unreasonableness of CARD's and TIEC's recommendations. Historical ROEs (9.65% to 9.76%) are significantly higher than the 9.0% and 9.15% ROEs recommended by CARD and TIEC in this proceeding. Dr. Woolridge even confirmed that in the cases in which he testifies, his recommended ROEs are obviously lower than the regulator-authorized ROEs in those same cases.[96]

Access to Capital

In its exceptions, TIEC further argues that SWEPCO would still be able to access capital with a 9.15% Commission-authorized ROE. This is false. In support of this assertion, TIEC points out that both SWEPCO and AEP Texas were able to issue sizeable bonds earlier this year. While these utilities were able to issue debt in 2021, this fact does not support TIEC's assertion. SWEPCO was able to issue a five-year note in March 2021, but its authorized ROE at the time was 9.65%. AEP Texas' authorized ROE at the time of its debt issuance was 9.4%. The risk

---

[94] SWEPCO Ex. 38 at 54:1 (Source: Regulatory Research Associates. Excludes limited issue rate riders. Based on data through March 31, 2021. Note that the 30-year Treasury yield is based on a backwards-looking moving average that incorporates the previous 252 trading days (approximately one calendar year)).

[95] SWEPCO Ex. 38 at 53:6-12.

[96] Tr. at 979:25-980:8 (Woolridge Cross) (May 24, 2021).

profile of these utilities does not support a 9.15% ROE. Such a drastic decline in ROE would negatively affect SWEPCO's debt to cash flow metrics, and consequently, hinder SWEPCO's ability to raise capital.

The ROEs recommended by TIEC and CARD are significantly lower than any ROE the Commission has authorized recently, even for wires-only companies, which Staff and OPUC witnesses generally view as less risky than vertically integrated utilities like SWEPCO.[97] That is, SWEPCO's authorized ROE should be higher (reflecting greater risk) than the ROEs for wires-only companies. Yet, TIEC and CARD argue for substantially lower ROEs. There is no basis for their recommendations. In an admittedly outlier COVID-19 year (2020), the Commission authorized 9.4% ROEs for Texas wires-only companies.[98] There is no evidence to support the assertion that a vertically integrated utility such as SWEPCO could attract capital with a 9% or 9.15% ROE. The recommendations of TIEC and CARD are unreasonably low.

Conclusion

The *Bluefield* and *Hope* decisions direct the Commission to set rates that allow SWEPCO to earn a return commensurate with investments of comparable risk (i.e., other utilities), ensure financial soundness, and access capital.[99] Investors will only provide funds to a firm if the return they expect is equal to, or greater than, the return they require to accept the risk of providing funds to the firm. The ROE recommendations of TIEC and CARD are too low and do not meet the directive of *Hope* and *Bluefield*. SWEPCO urges the Commission to authorize a ROE no lower than 9.6%, which is consistent with the average authorized ROEs for vertically integrated utilities in Texas and across the nation – the very utilities competing with SWEPCO for investment dollars.

7. Staff's Proposed ROE Adjustment and Independent Consultant for Transmission Outage (Staff)

The ALJs correctly declined to adopt Staff's recommended ROE penalty and independent consultant proposal. As they noted in the PFD, "Staff failed to demonstrate that an ROE penalty is warranted" because "[t]he August 18, 2019 outage was a one-time event" and "Staff did not

---

[97] Tr. at 1036:19-24 (Filarowicz Cross); s*ee also* Tr. at 983:1-6 (Woolridge Cross) (May 24, 2021).

[98] CARD Ex. 4 at 16, Table 3.

[99] *See Bluefield*, 262 U.S. 679, 683; *Hope*, 320 U.S. 591, 604.

demonstrate that SWEPCO was negligent in its vegetation management practices."[100] This conclusion is consistent with both the evidence and applicable law.

As an initial matter, Staff's exceptions on this issue barely mention the law governing ROE adjustments based on service interruption issues, which does not support Staff's position. Staff refers to PURA § 36.052, which provides that in establishing a reasonable ROE, the Commission shall consider the quality of the utility's services and management and the efficiency of the utility's operations. As the ALJs concluded, Staff did not establish that an ROE penalty is warranted based on these factors. Instead, Staff focuses on a single outage event. An ROE penalty under § 36.052 should be based on a review of the utility's services, management, or operations, not a single outage.

Staff's exceptions do not mention the directly relevant Commission rule, 16 TAC § 25.52(b)(1), "Reliability and Continuity of Service," which provides that every utility shall make all reasonable efforts to prevent interruptions of service. SWEPCO presented considerable evidence concerning its reasonable efforts to prevent interruptions of service. For example, SWEPCO demonstrated that it has significantly increased transmission vegetation management expenditures in recent years, from $2.630 million in 2017 to $4.175 million in 2018, $6.498 million in 2019, and $6.135 million in 2020.[101] Although Staff's exceptions refer to "50 year-old and older transmission lines,"[102] Staff's witness recognized at the hearing that SWEPCO is not unusual in having a number of older lines that they are replacing, which is a common situation for electric utilities.[103] The evidence shows that SWEPCO has spent over $636.7 million on transmission investment since its last rate case, including over $270 million on asset improvement projects, which is approximately $60 million per year in capital additions to rebuild aging transmission infrastructure.[104]

In addition, AEP Transmission Forestry conducts two aerial vegetation inspection patrols each year for all lines greater than 200kV and AEP Transmission Field Services (TFS) performs

---

[100] PFD at 145; 351 (FOF 100-101).

[101] Rebuttal Testimony of Daniel R. Boezio, SWEPCO Ex. 41 at 5:8-15.

[102] Staff's Exceptions at 5.

[103] Tr. at 438:14-18 (Poole Recross) (May 20, 2021).

[104] SWEPCO Ex. 41 at 4:13-16, 5:16-19.

one patrol each year for all lines, including those less than 200kV. All forestry issues discovered by the AEP TFS patrols are forwarded to AEP Transmission Forestry, which uses the data from these inspections to determine reactive and proactive vegetation management strategies for SWEPCO. The reactive strategies target removal of immediate threats, while the proactive strategies use the identified vegetation conditions as an input in managing future work plans and determining frequency of maintenance.[105]

Each of the lines involved in the August 2019 outage had been inspected between April and June of that year, only a few months before the outage.[106] However, the spring growth season before the outage experienced extensive rainfall that resulted in vegetation growth far beyond normal. The Longview, Texas area received ten inches of rain in April, twelve inches in May and another ten inches in June 2019. This was more than 13 inches above normal for that period. This rainfall not only contributed to abnormal levels of vegetation growth prior to the August outage, but also hindered the Company's efforts to access flooded or impassable ROW to manage the growing vegetation. In one instance, the Company even had to use a barge to access and address vegetation growth during this period.[107] As the PFD notes, the vine that initially sparked the outage was aerially examined in April, just months before the outage, and at that time had a clearance of 25 feet from the conductor.[108]

Staff's exceptions also refer repeatedly to *distribution* vegetation management and *distribution* SAIDI and SAIFI, which are separate issues addressed in Section VII.A.4 of the PFD. Ironically, both Staff and the ALJs agree with SWEPCO's request that the Commission grant SWEPCO an increase of $5 million per year to be devoted to distribution vegetation management. SWEPCO appreciates Staff's concurrence that the Company should receive additional revenue to devote to distribution vegetation management, but that is an entirely separate program that bears no relationship to transmission vegetation management.

Staff's attempt to characterize the outage as "catastrophic" or a "tip-of-the iceberg" event lack any basis in the record. Staff's claims of "SWEPCO's systematic complacency regarding its

---

[105] SWEPCO Ex. 41 at 3:6-16.

[106] SWEPCO Ex. 41 at 3:15-16.

[107] SWEPCO Ex. 41at 6:7-7:2.

[108] PFD at 145.

transmission system" and of "SWEPCO's sustained failure to adequately manage vegetation on its transmission system and its questionable overall maintenance of that system"[109] similarly lack any citation to the record because there is no evidence to support them. Instead, the outage was a single, seven-hour event.[110] Staff has not identified shortcomings in the quality of SWEPCO's services and management or the efficiency of its operations, that would support its proposed ROE penalty under PURA § 36.052. The evidence shows that SWEPCO makes reasonable efforts to prevent interruptions of service in accordance with 16 TAC § 25.52(b)(1). The ALJs correctly rejected Staff's proposal to impose an ROE penalty and require an independent consultant.

Finally, SWEPCO comprehensively investigated this outage in collaboration with the North American Electric Reliability Corporation (NERC) and SPP.[111] SWEPCO cooperated with an investigation by Staff, responding to numerous RFIs including those attached as exhibits to Mr. Poole's testimony.[112] SWEPCO met with the Commission in November 2019 and provided a detailed presentation and report of the event timelines, the affected stations and lines, and the Company's response.[113]

B. Cost of Debt (Staff)

The PFD recommends the Commission adopt SWEPCO's actual cost of debt at the end of the test year (4.18%) for purposes of calculating the authorized rate of return.[114] Staff was the only party that disputed SWEPCO's 4.18% cost of debt. In its initial and reply briefs, Staff argued that SWEPCO's cost of debt should be adjusted to 4.08% by removing the annual amortization of a Series I Hedge Loss sustained by SWEPCO in February 2012 because that amortization would end in February 2022.[115] The PFD concludes that Staff's recommended adjustment is improper. Specifically, the PFD provides as follows:

---

[109] Staff Exceptions at 4, 5.

[110] SWEPCO Ex. 41 at 3:11-16.

[111] SWEPCO Ex. 41 at 10:1-12.

[112] Staff Ex. 5c, Direct Testimony of John Poole Attachment JP-4 (Confidential).

[113] SWEPCO Ex. 41 at 10:13-21.

[114] PFD at 148.

[115] Staff Initial Brief at 43-44; *see also* Staff Reply Brief at 33.

> However, because the effective date for rates set in this proceeding will relate back to March 18, 2021, the Series I Hedge Loss will remain on SWEPCO's books for the vast majority of the rate year. Thus, even though most of the loss has been amortized as Staff points out, the amount remaining is not insubstantial. In addition, Staff's adjustment would remove one item from the cost of debt without considering other potential changes that could occur during that time period. For these reasons, the ALJs find it is not appropriate to remove the effect of the amortization when setting SWEPCO's cost of debt. Accordingly, the ALJs recommend that the Commission adopt SWEPCO's actual cost of debt at the end of the test year of 4.18%.[116]

The PFD is correct. In its exceptions to the PFD, Staff reiterates the arguments espoused in its briefs, but fails to raise any new arguments.[117] Staff's main argument is that most of the Series I Hedge Loss amortization has already been paid. The PFD addresses this issue by pointing out that the remaining amortization amount is substantial, the amortization was on SWEPCO's books during the test year, and the amortization will remain on the books for most of the rate year.[118] The PFD further determines that removing one item from the cost of debt without considering other potential changes is inappropriate. Staff responds by asserting that SWEPCO made other "financial known and measurable adjustments" to its own benefit.[119] However, Staff provides no reference or evidence to support this assertion. To the extent there are other known and measurable changes in the rate case, the parties either agreed to the adjustments or addressed them separately on the merits of each proposed change.

Based on the foregoing, SWEPCO respectfully requests the Commission deny Staff's exceptions and adopt the Company's actual cost of debt of 4.18% for the Test Year.

E. Financial Integrity, Including "Ring Fencing" (Staff)

Staff recommends the implementation of fifteen (15) ring-fencing provisions to insulate SWEPCO from its parent, AEP, and other affiliates.[120] In response, SWEPCO agreed to the recommended ring-fencing measures similar to those adopted by the Commission in the recent

---

[116] PFD at 148.

[117] Staff Exceptions at 6-7.

[118] PFD at 148.

[119] Staff Exceptions at 6.

[120] PFD at 150-151.

AEP Texas rate case (Docket No. 49494).[121] As both SWEPCO and AEP Texas are subsidiaries of AEP, it makes sense for similar ring-fencing measures to apply. The PFD recommends the Commission adopt the "essentially uncontested" ring-fencing provisions recommended by Staff (Recommendation Nos. 1, 2, 4, 7-12, 14, and 15).[122] However, based on the testimony of SWEPCO witnesses Ms. Renee Hawkins and Mr. D'Ascendis, the PFD recommends the Commission not adopt the contested ring-fencing provisions (Recommendation Nos. 3, 5, 6, and 13).[123]

With respect to Staff Recommendation No. 3 (ROE Commitment), Staff reiterates its position and belief that the measure has value, but it does not formally except to the PFD's recommendation to exclude the measure. Instead, Staff's exceptions focus on Recommendation Nos. 5, 6, and 13.[124]

As for Staff Recommendation No. 5 (No Cross Default Provisions) and No. 6 (No Financial Covenants or Rating Agency Triggers), Staff reasserts its argument that these provisions are necessary based on the size and breadth of AEP's operations.[125] That is, the sheer number of entities and the scope of AEP's total operations increases the risk that problems in another area of the AEP business family could negatively affect SWEPCO (and its customers). However, Staff is wrong and the PFD is right.[126] SWEPCO issues its own debt based on its own credit rating and risk profile. SWEPCO does not rely on the financial stability or credit ratings of other AEP entities.[127] Thus, Staff's Recommendation Nos. 5 and 6 would provide no protection to SWEPCO's customers, but would add legal and compliance costs to ensure none of the language in its debt instruments violate these provisions. Staff argues that the benefit outweighs the burden. However, Staff misses the point that there is no benefit, only the burden.

Staff further insists that Recommendation No. 13 (No Inter-Company Lending and

---

[121] PFD at 153.

[122] PFD at 155.

[123] PFD at 155.

[124] Staff Exceptions at 7-8.

[125] Staff Exceptions at 8.

[126] PFD at 153.

[127] Rebuttal Testimony of Renee V. Hawkins, SWEPCO Ex. 39 at 9.

Borrowing Commitment) is necessary to protect SWEPCO's customers from bearing the burden of paying costs associated with borrowing from AEP entities, which would increase SWEPCO's risk profile.[128] However, Staff cites to no evidence in the record to support its assertion. To the contrary, Ms. Hawkins provides concrete examples of certain borrowing programs (in addition to the money pool) that would actually allow SWEPCO to access funds with lower debt issuance costs and lower interest rates under particular circumstances.[129] These programs are a benefit to SWEPCO and its customers. However, Staff's Recommendation No. 13 would unnecessarily exclude SWEPCO from participating in these programs. It makes little to no sense to impose this unnecessary and unfair restriction on SWEPCO, while other AEP entities participate in the programs, just because the Commission imposed similar restrictions on other entities operating in Texas.[130]

The PFD correctly recommends that the Commission not adopt Staff's ring-fencing Recommendation Nos. 3, 5, 6, and 13. SWEPCO respectfully requests the denial of Staff exceptions on this issue.

VII. EXPENSES

A. Transmission and Distribution O&M Expenses

5. Distribution Vegetation Management Expenses and Program Expansion (Staff and OPUC)

A robust vegetation management program is critical to maintaining the reliability of SWEPCO's distribution system.[131] SWEPCO witness Drew W. Seidel further explained that given SWEPCO's heavily forested service area, which requires substantial amounts of tree trimming and removal to prevent outages, it should be recognized that this program will require increased vegetation management funding for SWEPCO to maintain and achieve improved reliability for customers.[132] To address this reality, SWEPCO proposed in this case a total annual vegetation

---

[128] Staff Exceptions at 9.

[129] SWEPCO Ex. 39 at 9.

[130] Staff Exceptions at 9, nn. 24-25.

[131] Direct Testimony of Drew W. Seidel, SWEPCO Ex. 10 at 16:17-19.

[132] SWEPCO Ex. 10 at 21:11-14.

management spend of $14.57 million. This reflects an increase of $5.0 million over the $9.57 million in vegetation management expenses incurred in the Test Year.[133] SWEPCO committed to using the entire $5 million over Test Year spend solely for increased vegetation management.[134]

SWEPCO's proposal is consistent with the Commission's decisions in the Company's last three rate cases, the last two of which were fully litigated.[135] For example, in SWEPCO's most recent rate case—Docket No. 46449—the Commission found an additional $2.0 million of spending over test year levels reasonable and necessary to carry forward SWEPCO's vegetation management program to improve overall reliability on targeted circuits and decrease outages caused by trees.[136] As it committed to do, SWEPCO spent the entirety of the additional $2 million on distribution vegetation management.[137]

Three parties –OPUC, CARD, and Texas Cotton Ginners' Association (TCGA) – opposed SWEPCO's distribution vegetation management proposal.[138] Staff, on the other hand, agreed that SWEPCO should receive its requested $5.0 million increase over its Test Year spend on vegetation management, and recommended the Commission open a compliance docket to detail how SWEPCO is spending the additional funds.[139] In addition, Staff recommended that SWEPCO be ordered to implement a four-year trim cycle for its distribution system within 12 months of the filing of the final order in this proceeding.[140] Staff did not, however, propose that SWEPCO be

---

[133] SWEPCO Ex. 10 at 18:10-19:1.

[134] SWEPCO Ex. 10 at 19:14-15.

[135] *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 37364, Order at FoF Nos. 17, 19, and 33 (Apr. 16, 2010); *Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs,* Docket No. 40443, Order on Rehearing at FoF Nos. 179-80 (Mar. 6, 2014); Docket No. 46449, Order on Rehearing at FoF Nos. 206-09.

[136] Docket No. 46449, Order on Rehearing at FoF No. 207.

[137] *See* Docket No. 46449, Order on Rehearing at FoF No. 208.

[138] *See, e.g.,* CARD Initial Brief at 41 (arguing SWEPCO's request is unnecessary and unwarranted); *see also* OPUC Initial Brief at 14-15 (claiming SWEPCO failed to demonstrate a need for such a significant increase in its vegetation management expense); *see* TCGA Initial Brief at 9-12 (contending that proposed increase in vegetation management expense is unreliable and excessive in so far as these costs relate to cotton gins).

[139] Direct Testimony of Ramya Ramaswamy, Staff Ex. 2 at 12:4-13:7. SWEPCO is not opposed to the proposed compliance docket. SWEPCO Ex. 10 at 21:15-17.

[140] Staff Ex. 2 at 14:8-11.

allowed to recover *any* of the incremental costs – approximately $23.78 million[141] dollars annually – associated with implementing a four-year trim cycle.

After reviewing the evidence and analyzing the parties' arguments, the ALJs agreed with SWEPCO and Staff, finding that an "additional amount of distribution O&M expense in the amount of $5 million is reasonable and necessary to carry forward SWEPCO's vegetation management program to improve overall reliability on targeted circuits and decrease outages caused by trees."[142] The ALJs also recommended opening a compliance docket to examine SWEPCO's distribution system reliability as well as SWEPCO's vegetation management practices and spending.[143] But the ALJs rejected Staff's proposal to require SWEPCO to implement a four-year trim cycle.[144] The ALJs explained that implementing a four-year trim cycle comes at a significant cost and noted that the recommended compliance docket would allow the parties to gather additional information for a future decision.[145]

Two parties have filed exceptions to the PFD's recommendations on distribution vegetation management:

- Staff excepts to the PFD's recommendation that SWEPCO not be required to implement a four-year trim cycle for distribution vegetation management.[146]
- OPUC excepts to the PFD's recommendation to allow SWEPCO $5 million over Test Year vegetation management expense, reiterating its claim that SWEPCO has failed to demonstrate a positive correlation between increased spending and positive reliability results.[147]

Staff's and OPUC's exceptions present the same arguments that were thoroughly evaluated by the ALJs and rejected in the PFD. For the reasons detailed in the PFD and discussed below, the

---

[141] The incremental costs is determined by subtracting Commission Staff's recommended amount of vegetation management expense to be included in rates, $14.57 million ($5 million + $9.57 million in Test Year expense), from the annual cost of implementing a four-year trim cycle, which Mr. Seidel estimated to cost $38.35 million annually. SWEPCO Ex. 10 at 20:9-11.

[142] PFD at 166 and FoF No. 121.

[143] PFD at 166 and FoF No. 123.

[144] PFD at 166.

[145] PFD at 166.

[146] Staff Exceptions at 10.

[147] OPUC Exceptions at 3-4.

Commission should adopt the PFD's recommendations on this issue.

a. Staff's proposed unfunded mandate that SWEPCO implement a four-year vegetation management cycle is contrary to Commission precedent, in conflict with the evidentiary record, and unnecessarily punitive in violation of PURA.

There is no doubt that moving to a four-year distribution vegetation management cycle would have a positive effect on distribution reliability. But in this case, SWEPCO did not request to implement a four-year vegetation management cycle due to the cost impact on customers (approximately $24 million annually). In making this decision, SWEPCO balanced the cost of additional vegetation management spend with the expected benefits to and cost impact on customers. For example, for the Test Year, SWEPCO's distribution System Average Interruption Duration Index (SAIDI) was 252.61 minutes.[148] This means that the average SWEPCO customer in Texas experienced 252.61 minutes of interruption in the Test Year.[149] For the remaining 525,347.39 minutes in the year (99.95% of the year), SWEPCO's average Texas customer received un-interrupted service. Under these circumstances, SWEPCO determined that going from an annual spend of $9.57 million (Test Year) to $38.35 million (estimated annual cost of implementing a four-year trim cycle) in a single year would be unreasonable and too costly for customers to absorb.[150]

Staff's recommendation that SWEPCO be required to implement a four-year trim cycle is not based on a cost-benefit analysis. Instead, Staff focuses entirely on the reliability benefits, which SWEPCO does not dispute. Staff's position that SWEPCO should implement a four-year trim cycle regardless of the significant cost impact on customers is imprudent and unreasonable. Indeed, that was the basis for the Commission's rejection of the exact same recommendation from Staff in SWEPCO's last base-rate case, Docket No. 46449. The ALJs in Docket No. 46449 described Staff's proposal as "aspirational" and recommended rejecting it as cost prohibitive.[151] Nothing has changed since Docket No. 46449. The Commission adopted the ALJs'

---

[148] SWEPCO Ex. 10 at 10:3-4.

[149] SWEPCO Ex. 10 at 10:4-5.

[150] SWEPCO Ex. 10 at 20:9-11; Rebuttal Testimony of Drew W. Seidel, SWEPCO Ex. 40 at 7:21-8:3.

[151] Docket No. 46449, PFD at 257.

recommendation to reject Staff's proposal in Docket No. 46449, and it should reject Staff's recommendation here for the same reason.[152]

Staff acknowledges the Commission's decision in Docket No. 46449, but insists the decrease in reliability on SWEPCO's distribution system since that case supports adoption of Staff's recommendation here.[153] Essentially, Staff suggests that the alleged recent decrease in reliability on SWEPCO's distribution system is due to SWEPCO's inadequate spending on vegetation management. Staff's suggestion, however, is contrary to the evidentiary record, including its own witness's direct testimony.

SWEPCO witness Mr. Seidel confirmed that SWEPCO's average distribution system average interruption frequency index (SAIFI) score since 2016 is 1.73, which is below the Commission's standard of 1.77.[154] As to distribution SAIDI, Staff witness Ramya Ramaswamy's testimony provides a table showing that the number of vegetation-related outages since 2013 have been declining.[155] During this same period, outages caused by "Weather/Lightning" have increased.[156] Ms. Ramaswamy also presents a table showing SWEPCO's annual distribution SAIDI scores for the period of 2012 through 2020.[157] Viewed together, these two tables in Ms. Ramaswamy's testimony illustrate the direct relationship between SWEPCO's distribution SAIDI scores and the increase in interruptions caused by Weather/Lightning.[158] Mr. Seidel confirmed that the increase in weather-related outages has led to increasing distribution SAIDI scores for a number of reasons:

- distribution SAIDI is "highly weather dependent;"[159]

---

[152] Docket No. 46449, Order on Rehearing at FoF Nos. 206-09 (adopting PFD recommendation on SWEPCO's vegetation management proposal).

[153] Staff Exceptions at 10.

[154] SWEPCO Ex. 10 at 10:11-12.

[155] Staff Ex. 2 at 9, Table: "Causes for SWEPCO's Forced, Sustained Interruptions" (showing the number of outages/interruptions caused by vegetation and by Weather/Lightning for the period of 2012 through 2020).

[156] Staff Ex. 2 at 9, Table: "Causes for SWEPCO's Forced, Sustained Interruptions."

[157] Staff Ex. 2 at 7, Table: "SWEPCO SAIDI for Forced Interruptions."

[158] *See* Staff Ex. 2 at 7 and 9.

[159] Tr. at 234:19-22 (Seidel Cross) (May 19, 2021).

- higher than average precipitation rates over the past three years contributed to an increase in weather-related outages;[160] and

- as SWEPCO improved its distribution system through the replacement of poles at end of life, reconductoring of circuits, and installation of smart switches, SWEPCO has seen fewer storms become major storms, which means fewer storms are excluded from the distribution SAIDI calculation.[161]

In addition, Mr. Seidel testified that new safety policies implemented since 2017 have resulted in an increase in restoration time, which in turn has led to increasing safety scores.[162]

Mr. Seidel also confirmed that the increased distribution vegetation management spending since Docket No. 46449 has improved the reliability for SWEPCO's customers on the targeted circuits. Specifically, as displayed in the tables below, there has been a significant improvement in the performance of targeted distribution circuits that were trimmed in 2018 and 2019. There has been significant improvement in overall reliability on these circuits and a decrease in the number of outages attributed to trees inside the ROW. These tables represent 11 circuits with approximately 283 circuit miles that were fully cleared, representing approximately 3.3% of SWEPCO's Texas overhead distribution circuits.[163] The number of outages from trees in the ROW on circuits that were trimmed completely was reduced by as much as 90% in the years following the trimming, the number of total customers affected was reduced by as much as 99%, and the customer minutes of interruption (CMI) was reduced by as much as 99% through the end of the Test Year.

---

[160] SWEPCO Ex. 10 at 12:1-4.

[161] SWEPCO Ex. 40 at 6:18-21.

[162] SWEPCO Ex. 10 at 12:7-15.

[163] SWEPCO Ex. 10 at 17:19-18:2.

Customer Experience
Improvements Due to Distribution Vegetation Management[164]

Circuits Trimmed in 2018

	Twelve Months Ending December 2017	Twelve Months Ending March 2020	Difference	% Reduction
No. of Interruptions	47	7	40	85%
Customers Affected	1,334	53	1,281	96%
CMI	248,308	7,572	240,736	97%

Circuits Trimmed in 2019

	Twelve Months Ending December 2018	Twelve Months Ending March 2020	Difference	% Reduction
No. of Interruptions	30	3	27	90%
Customers Affected	4,452	24	4,428	99%
CMI	730,148	5,728	724,420	99%

Mr. Seidel testified that he expects the increased spending requested in this case to produce results similar to those shown on the above tables.[165]

In sum, the record evidence, including that cited in Staff witness Ramaswamy's direct testimony, does not support Staff's claim that inadequate vegetation management spending is the cause of the alleged distribution reliability issues occurring since Docket No. 46449.

Finally, Staff's recommendation that SWEPCO implement a four-year trim cycle without the opportunity to recover any of the incremental costs of doing so – $23.78 million annually – violates PURA's requirement that rates be set at a sufficient level to allow an opportunity to recover both the utility's reasonable and necessary expenses and a reasonable return.[166] To put Staff's recommended penalty into perspective, the incremental annual cost of implementing the four-year trim cycle by itself would eliminate nearly half of Staff's recommended rate increase for SWEPCO. Staff implies that the Commission cannot put the cost of implementing a four-year

[164] SWEPCO Ex. 10 at 18.

[165] SWEPCO Ex. 10 at 20:1-2.

[166] PURA § 36.051.

trim cycle into rates because SWEPCO did not provide the analysis underlying its cost estimate – $38.35 million annually.[167] But Staff's suggestion that SWEPCO's cost estimate is unreliable makes no sense given that no party, including Staff, put forward any evidence challenging the estimate or questioning how it was developed. Ultimately, as noted in briefing, SWEPCO is willing to accept Staff's proposal if fully funded.[168]

b. OPUC's opposition to SWEPCO's distribution vegetation management program is misplaced.

As discussed above, OPUC excepts to the PFD's recommendation that an additional $5 million for distribution vegetation management is justified.[169] OPUC concedes that its exception merely reiterates its argument that SWEPCO failed to establish that increased vegetation management spending leads to positive reliability results (*i.e.*, improved distribution SAIDI and SAIFI results).[170] OPUC's argument is belied by the evidentiary record and should be rejected.

Mr. Seidel confirmed that without additional funding, SWEPCO will likely see degradation in distribution SAIDI and SAIFI.[171] Mr. Seidel further testified that the suggestion that SWEPCO has not improved its reliability measures since Docket No. 46449 fails to consider the other mitigating factors that have affected overall system reliability metrics, many of which are outside of SWEPCO's control (*e.g.*, recent increases in weather-related outages).[172] Additionally, as noted above, there has been a dramatic improvement in the performance on the targeted distribution circuits that were trimmed in 2018 and 2019.[173] The improved reliability measures on the targeted distribution circuits are the direct result of the increased level of spending since Docket No. 46449.

SWEPCO's proposal for an increased level of vegetation management funds, focused exclusively on the Company's Texas distribution system, will improve reliability on targeted circuits as demonstrated by the reduction in the number of tree-related outages on the circuits that

---

[167] Staff Exceptions at 11.

[168] SWEPCO Ex. 40 at 7:21.

[169] OPUC Exceptions at 4; *see also* PFD at 166 and FoF No. 121.

[170] OPUC Exceptions at 4.

[171] SWEPCO Ex. 40 at 7:7-11.

[172] SWEPCO Ex. 40 at 3:8-9.

[173] SWEPCO Ex. 10 at 18, Figure 5.

were trimmed in 2018 and 2019.[174] Additionally, increased funding will reduce the CMI impacted on these circuits, which will in turn help distribution SAIDI.[175]

6. Allocated Transmission Expenses Related to Retail Behind-the-Meter Generation (TIEC)

In this case, SWEPCO requested recovery of its Test Year transmission charges from the Southwest Power Pool (SPP). These charges include costs associated with SWEPCO's purchase of NITS from SPP in accordance with SPP's Open Access Transmission Tariff (OATT), which itself has been filed with and approved by the Federal Energy Regulatory Commission (FERC). In evaluating SWEPCO's Test Year NITS charges, the ALJs first addressed whether the NITS charges are "deemed reasonable as a matter of law due to the filed rate doctrine and FERC's exclusive jurisdiction over the wholesale sale or transmission of electricity in interstate commerce."[176] Echoing the Commission's decision in Docket No. 42448, the ALJs concluded that "SWEPCO's undisputed evidence that its test-year NITS charges were billed by SPP and paid by SWEPCO is sufficient to demonstrate their reasonableness as a matter of law under the filed rate doctrine."[177]

After finding SWEPCO's Test Year NITS charges reasonable, the ALJs turned to SWEPCO's proposed jurisdictional allocation of the charges. As to this issue, the ALJs: (1) concluded that SWEPCO failed to demonstrate its proposed jurisdictional allocation was reasonable; and (2) recommended that 146 MW of Eastman Chemical Company's (Eastman) retail behind-the-meter (BTMG) load be removed when performing the jurisdictional and class allocations of Test Year transmission costs.[178] As explained in SWEPCO's exceptions to the PFD, removing Eastman's retail BTMG load from the jurisdictional cost allocation would, if approved, result in the arbitrary disallowance of $5.7 million of SWEPCO's reasonable Test Year

---

[174] SWEPCO Ex. 10 at 21:7-11.

[175] SWEPCO Ex. 40 at 7:2-3.

[176] PFD at 192.

[177] PFD at 194. *See also Application of Southwestern Electric Power Company for Approval of a Transmission Cost Recovery Factor*, Docket No. 42448, Order at Conclusion of Law (CoL) No. 18 ("Under the filed rate doctrine, proof that the SPP charges included in the approved transmission charges were billed to and paid by SWEPCO pursuant to the SPP OATT demonstrates the reasonableness of the charges for retail ratemaking purposes as a matter of law.") (Nov. 24, 2014).

[178] PFD at 196.

transmission charges and the unreasonable allocation of these costs to jurisdictions and customers that did not cause the costs to be incurred.[179]

TIEC does not except to the PFD's recommendation regarding the allocation of SWEPCO's Test Year transmission charges. Instead, TIEC proposes the Commission make clear that it is not adopting the "dicta" on pages 192 to 194 of the PFD relating to: (1) whether the NITS charges billed by SPP and paid by SWEPCO are reasonable; and (2) the Commission's authority to interpret a FERC-approved tariff.[180] The Commission should reject TIEC's proposed clarification for two reasons.

First, the PFD's discussion of the reasonableness of SWEPCO's Test Year NITS charges is not dicta, but rather a necessary first step in the ALJs' analysis of TIEC and Eastman's challenge to the reasonableness of the charges.[181] Simply put, there is no reason to even consider SWEPCO's cost allocation proposal if the costs at issue are unreasonable.

Second, what TIEC refers to as "dicta" is simply a statement of the law, upon which the ALJs necessarily relied in assessing the reasonableness of SWEPCO's Test Year NITS charges. For example, TIEC asserts that the "PFD includes dicta stating that the PUC may not interpret the SPP [OATT]."[182] But TIEC mischaracterizes the PFD's actual language. The PFD's exact statement, as accurately quoted in footnote 46 to TIEC's exceptions, is as follows: "The Commission, however, is not the proper forum for resolving the OATT's meaning."[183] The PFD's statement correctly summarizes well-settled law. Indeed, the Fifth Circuit has unambiguously found that "FERC, not the state, is the appropriate arbiter of any disputes involving a tariff's interpretation."[184]

TIEC insists that the PFD's statement of the relevant law (i.e., that the Commission is not

---

[179] SWEPCO Exceptions at 42-46.

[180] TIEC Exceptions at 11 and 13.

[181] PFD at 192-194.

[182] TIEC Exceptions at 11.

[183] TIEC Exceptions at 11, n. 46 (quoting PFD at 193).

[184] *AEP Texas North Co. v. Texas Indus. Energy Consumers*, 473 F.3d 581, 585 (5th Cir. 2006); *see also Entergy Corp. v. Jenkins,* 469 S.W.3d 330, 345 (Tex. App.—Houston [1st Dist.] 2015, pet. denied) ("Because resolving the dispute in this case involves the consideration and interpretation of a FERC-approved tariff, we conclude that this dispute falls within FERC's exclusive jurisdiction."); *see also* PFD at CoL No. 36.

the "proper forum" for resolving a dispute regarding the SPP OATT's meaning or SWEPCO's compliance with the OATT) is contrary to the Fifth Circuit's holding in *Entergy Texas, Inc. v. Nelson*, 889 F.3d 205 (5th Cir. 2018). Specifically, TIEC suggests the *Entergy* case stands for the proposition that the Commission can resolve disputes regarding a FERC-approved tariff's meaning if necessary to give effect to the rates fixed by FERC.[185] But in the *Entergy* case, the Commission did not interpret Entergy Texas, Inc.'s (ETI) FERC-approved tariff to assess the reasonableness of or to give effect to payments made or receipts received by ETI pursuant to the tariff.[186] Nor did the Commission take issue with a FERC order authorizing specific payments to be made to or by ETI under the tariff.[187] Rather, as the Fifth Circuit made clear, there was no jurisdictional conflict in that case because the Commission "accepted FERC's determination of the amount of receipts to be distributed to ETI under the filed rate."[188]

To be clear, the law summarized and relied upon by the ALJs in assessing the reasonableness of SWEPCO's Test Year NITS charges does not, as TIEC suggests, render the Commission powerless to give effect to rates fixed by FERC under the filed rate doctrine. TIEC conflates reading a FERC-approved tariff or FERC order with resolving a dispute over the tariff or order's meaning.[189] Obviously, the Commission may read the tariff or order as necessary to give effect to the rates fixed by FERC. That is exactly what the Commission did in the *Entergy* case discussed above. Similarly, in this case there was no need to resolve a dispute over the SPP OATT's meaning to identify the Test Year SPP charges billed to and paid by SWEPCO. The record evidence establishing as much is uncontested:

- There is no dispute that the transmission charges included in SWEPCO's application were actually charged to SWEPCO by SPP.
- It is undisputed that SPP's Test Year bills to SWEPCO included charges for SWEPCO's purchase of NITS from SPP.

---

[185] TIEC Exceptions at 11-12.

[186] *Entergy Texas, Inc. v. Nelson*, 889 F.3d 205, 207-11 (5th Cir. 2018).

[187] *Entergy Texas, Inc.*, 889 F.3d 205, 207-11.

[188] *Entergy Texas, Inc.*, 889 S.W.3d 205, 209 and 217.

[189] *See, e.g.,* TIEC Exceptions at 12, n. 51 ("It is not possible to give binding effect to a document without first interpreting it to know what one should effectuate.").

- It is undisputed that SWEPCO paid all Test Year charges for transmission service billed by SPP.
- SWEPCO offered uncontroverted proof of the charges billed to SWEPCO by SPP pursuant to the SPP OATT.[190]

Under well-settled Commission precedent, as described by and relied upon by the ALJs, the above uncontested evidence alone is sufficient to satisfy SWEPCO's burden to establish the reasonableness of SWEPCO's requested Test Year SPP charges.[191]

Further, the Commission has previously concluded that it is not proper to look behind and examine the reasonableness of charges made to SWEPCO under the SPP OATT.[192] At hearing, TIEC and Eastman's expert witnesses agreed that their primary challenge to SWEPCO's Test Year NITS charges boiled down to a dispute between SPP, on the one hand, and TIEC and Eastman, on the other, over how to interpret and implement the SPP OATT.[193] FERC is the exclusive arbiter of any disputes involving a tariff's interpretation.[194] Thus, as the PFD correctly recognizes,[195] whether the SPP OATT is susceptible to TIEC and Eastman's competing interpretation is a legal question properly raised before FERC.[196] Despite TIEC's claim, the PFD requires no clarification on this point.

Finally, TIEC "excepts" to alleged dicta that "SWEPCO is obligated to pay SPP for charges that SPP bills to it and that such payments are reasonable as a matter of law."[197] Again, this is

---

[190] Direct Testimony of John O. Aaron, SWEPCO Ex. 31 at Exhibit JOA-5 (identifying total amounts billed by SPP). The SPP charges associated with NITS are booked to FERC Accounts 561 and 565. This information is contained in Schedule P at P-2. *See* SWEPCO Ex. 1 at Schedule P-2.

[191] *See* Docket No. 42448, Order at CoL No. 18.

[192] *See* Docket No. 42448, PFD at 9 ("CARD's contention that SWEPCO must prove (and the Commission may examine) the reasonableness of charges made to SWEPCO under the SPP OATT is violative of the filed rate doctrine. As SWEPCO noted, if CARD (or any other party) wished to challenge charges made to SWEPCO under the SPP OATT, that party could have done so at FERC. The Commission is not the proper forum for such a challenge.") (Oct. 10, 2014); *see also* Docket No. 42448, Order at 2 and CoL Nos. 12-18 (approving PFD's decision).

[193] Tr. at 629:22-630:13 (Al-Jabir Cross); 646:24-25 (Pollock Cross) (May 21, 2021).

[194] *AEP Texas North Co.*, 473 F.3d 581, 585-86; *see also Entergy Corp. v. Jenkins,* 469 S.W.3d 330, 345.

[195] PFD at 193-194.

[196] *AEP Texas North Co.*, 473 F.3d 581, 585-86.

[197] TIEC Exceptions at 12.

simply the law. This Commission concluded in Docket No. 42448 that "SWEPCO is obligated to pay SPP the charges SPP bills to SWEPCO pursuant to the SPP OATT for the provision of transmission services to SWEPCO."[198] And, as noted above, the Commission has also concluded that proof that the SPP charges "were billed to and paid by SWEPCO pursuant to the SPP OATT demonstrates the reasonableness of the charges for retail ratemaking purposes *as a matter of law*."[199] This legal backdrop is the basis for the PFD's finding that SWEPCO's Test Year NITS charges are reasonable. TIEC's hyperbolic claim that this leaves parties with no recourse if SPP accidentally bills SWEPCO $10 million instead of an intended $1 million is a red herring.[200] The reality is that such an error would likely be corrected upon notice to SPP by SWEPCO before the charges were ever submitted to the Commission for review and inclusion in retail rates. Even assuming SPP refused to correct the error, the notion that there is no recourse if these charges are paid by SWEPCO and subsequently included in retail rates is false. SWEPCO could file a complaint[201] with FERC seeking a refund of any amounts paid in excess of that which should have been paid under the filed rate—i.e., the SPP OATT.[202] And just like charges billed to and paid by SWEPCO under the SPP OATT, any refund received by SWEPCO associated with these charges would be credited to retail customers through retail rates.

C. Labor Related Expenses

2. Incentive Compensation

a. Short-Term Incentive (STI) Compensation (OPUC)

The PFD correctly rejected OPUC's arguments concerning short-term incentive compensation (STI). Contrary to OPUC's argument, SWEPCO properly used target amounts of

---

198 Docket No. 42448, Order at CoL No. 16.

199 *See* Docket No. 42448, Order at CoL No. 18 (emphasis added).

200 TIEC Exceptions at 13.

201 16 U.S.C. §§ 824e, 825e; 18 C.F.R. § 385.206(a) ("Any person may file a complaint seeking Commission action against any other person alleged to be in contravention or violation of any statute, rule, order, or other law administered by the Commission, or for any other alleged wrong over which the Commission may have jurisdiction."); *see also American Elec. Power Serv. Corp.*, 153 FERC ¶ 61167, at P 21 (FERC 2015) ("In sum, for the reasons explained above, the Commission concludes that: (1) retail ratepayers may file complaints and protest transmission rates and wholesale power sales rates before the Commission; and (2) allowing retail customers to challenge transmission and wholesale power sales rates does not violate principles of federalism.").

202 16 U.S.C. § 824e(b).

incentive compensation consistent with Commission precedent and the testimony of all witnesses, *including OPUC's own witness*. SWEPCO's incentive compensation for collectively bargained employees is consistent with the Commission's order in the Company's last rate case and is presumed reasonable under PURA § 14.006, while OPUC's proposed reduction to that amount would interfere with collectively bargained compensation in violation of § 14.006.

By way of background, in its application SWEPCO reduced its test year STI expense, consistent with Commission precedent, to adjust test year expense to the target level and to remove half the portion of the funding measure related to financial goals, except for union compensation.[203] This resulted in SWEPCO reducing test year STI expense by $3,866,220.[204] Staff witness Ruth Stark recognized that SWEPCO's adjustment followed Commission precedent and recommended only a small additional adjustment based on errors the Company identified in discovery.[205] OPUC and CARD proposed additional reductions that the PFD rejects. Only OPUC has carried its arguments forward in exceptions.

In rejecting OPUC's arguments, the PFD correctly concluded that SWEPCO's STI compensation is set at a target level that is known and measurable and consistent with Commission-approved practice, and that SWEPCO demonstrated it has historically provided awards at or above that level.[206] SWEPCO's testimony established that the target level of STI compensation is known and measurable at any given time and is generally lower than the actual amount of STI paid.[207] The testimony also established that the Company's actual STI awards have averaged substantially above target over the last 5 and 10 years, at 147% and 152%, respectively, including the awards for 2020 that were paid in March of 2021.[208] The Commission approved STI awards based on target amounts in SWEPCO's last rate case, Docket No. 46449, and in SPS' 2015

---

[203] Rebuttal Testimony of Andrew R. Carlin, SWEPCO Ex. 46, at 3:8-14; *see also* PFD at 207.

[204] SWEPCO Ex. 6 at 22:15-17.

[205] Direct Testimony of Ruth Stark, Staff Ex. 3 at 8:13-18, 9:15-10:6; *see also* PFD at 207.

[206] PFD at 215.

[207] SWEPCO Ex. 46 at 5:11-13.

[208] SWEPCO Ex. 46 at 4:15-17.

rate case, Docket No. 43695.[209] OPUC has not identified any case where the Commission did otherwise.

In fact, every witness in this case, *including OPUC's own witness*, based their STI recommendations on the target level consistent with Commission practice. Staff witness Stark recognized that SWEPCO's request was based on the target level of STI expense[210] but did not disagree with the Company's STI request except to recommend minor adjustments due to errors identified by the Company in discovery.[211] CARD witness Mark Garrett recommended a different STI adjustment but did not disagree with basing STI expense on target rather than actual levels.[212] *Even OPUC's own witness* Ms. Cannady based her STI recommendations on target levels rather than actual levels. Her testimony notes that her calculation "begins with actual STI compensation awarded to SWEPCO employees in March 2020 *set at 100% of the target payout*."[213] Her Schedule CTC-8 confirms that her calculation starts with the incentive compensation *target*, not *actual* payouts.[214] As Commission precedent and even OPUC's own witness confirm, it is established practice at the Commission to base STI expense on target levels rather than the typically higher actual payout levels. The PFD correctly rejected OPUC's argument on this issue.

The PFD also correctly rejected OPUC's second STI argument – to reduce SWEPCO's collectively bargained STI expense – which is contrary to both Commission precedent and PURA § 14.006. PURA § 14.006 provides:

> The commission may not interfere with employee wages and benefits, working conditions, or other terms or conditions of employment that are the product of a collective bargaining agreement recognized under federal law. An employee wage rate or benefit that is the product of the collective bargaining is presumed to be

---

[209] Docket No. 46449, PFD at 237 (the Company's incentive compensation request was based on target levels); *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 43695, PFD at 88 (SPS STI request based on target level of incentive compensation expenses) (Oct. 12, 2015).

[210] Staff Ex. 3 at 8:16-18.

[211] Staff Ex. 3 at 9:15-10:6.

[212] Direct Testimony of Mark E. Garrett, CARD Ex. 2 at 17:17-18 ("SWEPCO . . . adjusted its test year levels for short term incentives down to their target levels . . . ."), 18:14-21:9 (proposing a separate STI adjustment not related to use of target levels).

[213] Direct Testimony of Constance T. Cannady, OPUC Ex. 1 at 38:3-4 (emphasis added).

[214] OPUC Ex. 1 at 72; OPUC Ex. 16, Schedule CTC-8, Recommended Adjustment to SWEPCO Direct STI Compensation (top line of calculation begins with "SWEPCO Direct Test Year STI Compensation at 100% Target").

reasonable.

OPUC's proposal to exclude collectively bargained STI expense violates both of PURA § 14.006's components:

- it disallows costs that are presumed reasonable by law; and
- it interferes with employee wages and benefits that are the product of a collective bargaining agreement.

Disallowing collectively bargained STI expenses cannot be reconciled with PURA § 14.006's directive that such expenses are presumed reasonable. PURA § 14.006 has carved out collective bargaining agreements from the Commission's authority to find wages and benefit expenses unreasonable. Furthermore, if recovery of collectively bargained STI expense were denied, the Company would be motivated to renegotiate collective bargaining agreements to reduce or eliminate such STI expense in favor of additional base pay, which would interfere with collectively bargained compensation in violation of PURA § 14.006. Treating collectively bargained STI expense the same as STI expense for other employees would ignore the treatment of such wages provided under §14.006. SWEPCO's inclusion of collectively bargained STI expense is also consistent with its last rate case, where such treatment was not contested.[215]

In summary, OPUC is reaching far beyond the Commission's established parameters for recovery of STI expense. Staff and the PFD are correct that the Company's STI request is within those parameters.

E. Purchased Capacity Expense

2. Wind Contracts (TIEC)

SWEPCO entered into its first contract to purchase wind energy in 2008 (Majestic). The remaining Renewable Energy Purchase Agreements (REPAs) (High Majestic, Flat Ridge, and Canadian Hills) had in-service dates starting in 2012. The cost of energy incurred under these contracts has been collected through SWEPCO's fuel factor and reconciled as energy purchases since their inception, starting with Docket No. 40443 for the Majestic REPA.[216] In Docket

---

[215] Docket No. 46449, PFD at 235.

[216] *See* SWEPCO Ex. 47 at 10:20-11:4. *See also* Cross-Rebuttal Testimony of Tony M. Georgis, OPUC Ex. 60 at Attachment A (OPUC Ex. 61).

No. 40443, both a base rate and fuel reconciliation proceeding, none of the cost incurred under the Majestic REPA was attributed to capacity and included in SWEPCO's base rates.[217] The prudence of the later REPAs were addressed by the Commission in Docket No. 46449. These REPAs were entered into consistent with a settlement agreement associated with the retirement of SWEPCO's Welsh Unit 2. In Docket No. 46449, also a base rate case, SWEPCO provided evidence that the REPAs were acquired by SWEPCO at a cost forecast to be lower than SWEPCO's marginal energy cost.[218] In that docket, the Commission found that those REPAs were economic when the full-term of the long-term wind PPAs were considered, that economic benefit was expected for SWEPCO's customers, and that SWEPCO prudently agreed to include the long-term PPAs in the settlement.[219] In Docket No. 46449, no capacity component was imputed to these or any of SWEPCO's REPAs. As correctly noted in the PFD, "there has been ample opportunity for the Commission to reconsider the treatment of the contracts if it were inclined to do so."[220]

In its exceptions, TIEC cites the order in Docket No. 23550 for the proposition that the Commission has imputed a capacity value to energy-only PPAs "if those PPAs provide capacity value."[221] However, the facts in Docket No. 23550 were more complex than that. In that case, the Commission acknowledged parties had claimed that the contracts at issue were intentionally structured to "avoid overt capacity charges," and imputed a capacity value to them "despite the fact that EGSI negotiated the contracts without a separately stated capacity charge."[222] In addition, in the appellate review of that case, the court found that the utility's own testimony corroborated the utility's "desire to acquire through purchased power the power and *capacity* it required to avoid

---

[217] Docket No. 40443, PFD at 293 ("SWEPCO's only current [capacity] contract in Texas rates is an 18-year contract with Louisiana Generating LLC.") (May 20, 2013).

[218] Docket No. 46449, PFD at 82 ("She [SWEPCO witness Ms. McCellon-Allen] added that at the time of the settlement, 'PPAs for wind generation could be acquired by SWEPCO at a cost forecast to be lower than SWEPCO's marginal energy cost' making that part of the settlement an 'expected economic benefit for customers' rather than a detriment.").

[219] Docket No. 46449, Order on Rehearing at FoF Nos. 150 & 151.

[220] PFD at 245-46.

[221] TIEC Exceptions at 14 (emphasis omitted).

[222] *Application of Entergy Gulf States, Inc. for the Authority to Reconcile Fuel Costs*, Docket No. 23550, Order at 2-3 (Aug. 2, 2002).

another energy shortfall."[223] There is no such allegation or finding in this case.

TIEC also cites to *City of El Paso v. Pub. Util. Comm'n,* in which the appeals court affirmed the Commission's imputation of a capacity value to a power purchase. However, the contract at issue in that case was for the purchase of "Firm Power Service," which was defined in the contract itself as "that quantity of firm capacity, with reserves, and associated energy that the Company will make continuously available to the Customer from the Company's generation resources, which include capacity purchases."[224] In SWEPCO's REPAs, there are no separate provisions for the payment of any kind of capacity charge.[225]

TIEC also cites Docket No. 26195[226] for the proposition that "the Commission has imputed capacity costs to PPAs without an explicitly stated capacity charge on numerous occasions."[227] However, Docket No. 26195 does not stand for that proposition. Instead, in Docket No. 26195, the Commission discussed the holding of the other two cases discussed above and remanded the matter for further evidence. The Commission wrote:

> In the El Paso and Entergy cases, the Commission found capacity in certain purchased-power contracts based, in part, on specific contract language and other documents in the evidentiary record that indicated the utility was purchasing capacity. However, in this proceeding, based on the evidentiary record, the Commission was unable to determine whether specific contracts or other documents at issue contain language that would indicate that the utility was purchasing capacity.[228]

The capacity issue in Docket No. 26195 was later resolved by settlement.

The cases cited by TIEC do not support the overly simplistic propositions TIEC attributes to them. SWEPCO recommends that the Commission continue to account for the costs incurred under SWEPCO's REPAs as energy, as it has for a decade.

---

[223] *Entergy Gulf States, Inc. v. Pub. Util. Comm'n of Tex.,* 173 S.W.3d 199, 211 (Tex. App.—Austin 2005, pet. Denied) (emphasis in original).

[224] *City of El Paso v. Pub. Util. Comm'n of Tex.,* 344 S.W.3d 609, 619-20 (Tex. App.—Austin 2011, not pet.).

[225] SWEPCO Ex. 47 at 11:3-6.

[226] *Joint Application of Texas Genco, LP and CenterPoint Energy Houston Electric, LLC to Reconcile Eligible Fuel Revenues and Expenses Pursuant to SUBST. R 25.236*, Docket No. 26195, Order at 7-8 (May 28, 2004).

[227] TIEC Exceptions at 14, n. 60.

[228] Docket No. 26195, Order at 7-8 (footnote omitted).

VIII. BILLING DETERMINANTS

B. ETSWD's Proposed COVID-19 Adjustment (ETSWD)

Test year billing determinants are used to design rates in a rate proceeding.[229] Specifically, the authorized revenue requirement by class is divided by the test year billing determinants to set the new effective rates.[230] SWEPCO's unadjusted Test Year billing determinants are uncontested. It is also undisputed that SWEPCO's initial filing included pro forma adjustments to the Test Year billing determinants for all of the known and measureable items *at the time* this case was filed. Consistent with the Commission's rules and precedent, the PFD finds that SWEPCO's adjusted Test Year billing determinants are reasonable and should be used in designing the final rates resulting from this case.[231]

ETSWD excepts to the PFD's finding and insists that an updated Class Cost of Service Study (CCOSS) is necessary to accurately determine billing determinants in light of the COVID-19 pandemic and its effect on consumption patterns across various customer classes.[232] ETSWD argues this is necessary because the "goal of cost allocation and rate design is to set rates that describe the conditions that will prevail in the future when the rates go into effect."[233] According to ETSWD, it is "self-evident" that an updated CCOSS reflecting consumption data during the COVID-19 pandemic will better describe conditions that will prevail when rates go into effect than SWEPCO's filed CCOSS.[234] But ETSWD's arguments are not new, and each was rejected in the PFD.[235] Notably, the PFD explains that "updating SWEPCO's cost of service study through post-test year data would not result in rates that are known to be reflective of customer demands going forward" because "the continuing effects of COVID-19 are transitory and unknown."[236] The PFD

---

[229] Direct Testimony of Chad M. Burnett, SWEPCO Ex. 30 at 3:10-12.

[230] SWEPCO Ex. 30 at 3:10-12.

[231] PFD at FoF No. 236.

[232] ETSWD Exceptions at 1.

[233] ETSWD Exceptions at 4.

[234] ETSWD Exceptions at 5.

[235] PFD at 257-265.

[236] PFD at 14, 263, and FoF Nos. 230-233.

further finds that a "pro forma adjustment to billing determinants should not be used to address a temporary event, because a pro forma adjustment is intended to ensure that test year data better represents a utility's ongoing operations."[237] The Commission should adopt the PFD's findings on this issue for three reasons.

First, ETSWD has not provided and the record does not contain the information necessary to implement the recommended CCOSS update. ETSWD concedes as much in its exceptions by asking the Commission to instruct SWEPCO to update its CCOSS "with the most current data available" and use this updated CCOSS to set final rates resulting from this case.[238] Essentially, ETSWD is asking the Commission to discard SWEPCO's filed CCOSS and replace it with a new study based solely on ETSWD's speculation that the COVID-19 pandemic's effects are permanent. As the PFD notes, ETSWD's request is contrary to the Commission's rules and historical practice.[239]

Second, ETSWD's recommended update to the CCOSS is not known and measurable. ETSWD concedes that it "does not and cannot know" the results of the updated CCOSS study before it is updated.[240] Yet it argues that its recommendation is not speculative because the results of the updated study will be known and measurable once it is completed.[241] ETSWD misses the point, which is that it has failed to demonstrate that an updated CCOSS would be more apt to reflect usage patterns that will prevail into the future. In order to accept ETSWD's position, one would have to assume that the pandemic's effect on SWEPCO's Texas jurisdictional sales is permanent. However, the Commission has impliedly found that the pandemic's long-term effects, if any, are unknown.[242] Moreover, there is no evidence that SWEPCO's sales and usage data

---

[237] PFD at FoF No. 233.

[238] ETSWD Exceptions at 9.

[239] PFD at 264.

[240] ETSWD Exceptions at 3.

[241] ETSWD Exceptions at 3-4.

[242] *See Application of El Paso Electric Company to Amend it Certificate of Convenience and Necessity for an Additional Generating Unit at the Newman Generating Station in El Paso County and the City of El Paso*, Docket No. 50277, PFD at 24 (The ALJs in Docket No. 50277 rejected an argument that the effects of the COVID-19 obviated the need for a new generating facility. Specifically, the ALJs explained that long-term effect of the COVID-19 pandemic "remains no more than speculation.") (Sept. 3, 2020); *see also* Docket No. 50277, Order at 1 (approving the PFD) (Oct. 16, 2020).

during the pandemic, which by definition is a transitory event, are representative of what is likely to prevail in the future. Indeed, the record evidence demonstrates otherwise.

- On July 2, 2020, Governor Abbott issued an order requiring face coverings for all public spaces in Texas.[243] However, by March 2, 2021, Governor Abbott issued an executive order (Executive Order GA-34) removing the mask mandate and allowing businesses in Texas to operate at 100% capacity with no restrictions.[244] Given Executive Order GA-34, it is now known that businesses that were temporarily forced to limit their operations in response to the pandemic in 2020 will not be under the same restrictions moving forward.[245]

- SWEPCO witness Mr. Chad Burnett explained that while the impact of the pandemic was severe initially, this impact has been offset as businesses have been able to reopen, vaccinations have come in place, and the government has put significant stimulus money into the economy.[246]

- Mr. Burnett further testified that the most recent sales data shows that the "narrative is flipped"—i.e., Residential sales are down and Commercial and Industrial sales are up significantly.[247]

Simply put, the record evidence shows that, while the pandemic did affect SWEPCO's Texas jurisdictional load in the months immediately after the end of the Test Year, the effects were temporary in nature and are not expected to continue.

Finally, ETSWD's proposal violates the matching principal because it fails to reflect both SWEPCO's system costs *and* system sales during the same time period. Under the "matching principle," to which the Commission has long adhered, the time period used for expenses must match the time period used for revenues in setting rates.[248] ETSWD has made no attempt to show that its proposed mixing of time periods for SWEPCO's costs and sales will result in a more accurate measure of the utility's jurisdictional costs and revenues that are apt to prevail in the future.

---

[243] Rebuttal Testimony of Chad M. Burnett, SWEPCO Ex. 53 at 5:15-16.

[244] SWEPCO Ex. 53 at 5:16-19; *see also* Executive Order No. 34 relating to the opening of Texas in response to the COVID-19 disaster, ETSWD Ex. 9.

[245] SWEPCO Ex. 53 at 6:5-10; *see also* Tr. at 1481:17-1482:10 (Burnett Cross) (May 26, 2021).

[246] Tr. at 1494:21-1495:6 (Burnett Redirect) (May 26, 2021).

[247] Tr. at 1474:1-5 (Burnett Cross) and 1495:7-1496:8 (Burnett Redirect) (May 26, 2021).

[248] Docket No. 43695, Order on Rehearing at FoF Nos. 24A-24B (Feb. 23, 2016).

IX. FUNCTIONALIZATION AND COST ALLOCATION

B. Class Allocation

5. TCGA's Class Allocation Issues (TCGA)

The TCGA excepts to the ALJs' recommendation that the Commission take no action in this docket to address the Cotton Gin class. However, as SWEPCO pointed out and as the PFD appropriately found, TCGA did not present the ALJs with an alternative to the standard class cost allocation methods used by SWEPCO that would address TCGA's concerns.[249] Now in its exceptions, for the very first time, TCGA proposes specific modifications, what it calls "simple adjustments" to SWEPCO's class cost allocation that it now contends will more fairly and equitably allocate certain costs that the Cotton Gin class does not cause.[250] These proposed adjustments were not offered by TCGA's witness in pre-filed testimony, in any of the evidence presented at the hearing by TCGA, through cross-examination of SWEPCO's cost allocation witness (or any other witness) at the hearing, or even in TCGA's post-hearing briefing. Only now, after the record is closed and the PFD is issued, does TCGA provide a proposal that it claims will more fairly and equitably allocate costs than SWEPCO's methodology. Exceptions to a proposal for decision are an inappropriate vehicle through which to suggest changes to a cost allocation scheme. The adjustments proposed by TCGA in its exceptions should have been presented through testimony or at the very least in argument presented in post-hearing briefing. TCGA's proposals amounts to an unsupported request to reopen the record in this case without good cause, and thus should be summarily dismissed. The ALJs cannot amend the PFD based on arguments that were not included in evidence or post-hearing briefing.

As to the substance of the proposed adjustments, TCGA contends, without any evidentiary support whatsoever, that its proposal to zero out the demands for the Cotton Gin class from certain allocators for distribution underground and secondary investment would require no other changes to those allocators. In reality, such an adjustment would have significant flow-through effects on the class cost allocation in SWEPCO's revenue distribution, and other customer classes would be affected by TCGA's proposals in different ways and to varying degrees. Although TCGA's

---

[249] SWEPCO Reply Brief at 106; PFD at 287.

[250] TCGA Exceptions at 6-7.

proposals would allocate less costs to TCGA, there is no evidence as to how these adjustments would affect other secondary classes, and therefore no evidence to support TCGA's position that its proposals would make the overall class cost allocation more fair or equitable. This is another reason why the Commission should not adopt TCGA's proposal. Conversely, SWEPCO's cost allocation methodology has previously been approved by the Commission as reasonable and meeting the appropriate criteria.

Furthermore, and despite the ALJs' disagreement,[251] it is clear that by the proposals set forth in its exceptions, TCGA advocates for different rates for customers in different parts of SWEPCO's service area. If accepted, the resulting rates would conflict with the Commission's long-standing policy of setting uniform, system-wide rates.[252] Despite TCGA's complaint that SWEPCO allocates to customers in the Cotton Gin class certain demand and vegetation management costs that they do not cause, the class also benefits from system-wide rates because SWEPCO's much greater number of East Texas customers pay for a disproportionately greater share of the investments made by SWEPCO to serve its far fewer customers in the Panhandle.

Because the proposals to make adjustments to SWEPCO's proposed class cost allocation methodology set forth in TCGA's exceptions are not part of the record in this case and have been put forth for the very first time after the PFD was issued, this exception should be overruled. Moreover, the exception should be overruled because there is no evidence to support TCGA's proposition that its proposals will make the class cost allocation more fair or equitable or more reasonable than SWEPCO's methodology, which has previously been approved by the Commission. Finally, the exception should be overruled because TCGA's proposals would result in different rates for different customers based on their location within SWEPCO's service areas,

---

[251] PFD at 287, n. 1485.

[252] *Appeal of Southwestern Pub. Serv. Co. from Orders or Ordinances of Cities Denying Rate Relief*, Docket No. 2133, Examiner's Report at 1 ("**This Commission is firmly committed to uniform, system-wide rates within the service areas of each electric utility within the state.** Such uniformity is mandated by Section 45 of the Public Utility Regulatory Act which provides, 'No public utility may establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.' Any difference between urban and rural rates for the same service is ipso facto "unreasonable." Moreover, the setting of system-wide rates has been approved by the Supreme Court in *City of Corpus Christi vs. Pub. Util. Comm'n of Tex.*, 572 S.W. 2d 290 (Tex. 1978). In order to maintain such rates, the same Cost of Service must be used in both the rural and urban areas.") (emphasis added) (May 2, 1979) (adopted by Commission order on May 15, 1979); *Application of AEP Texas, Inc. for Authority to Change Rates*, Docket No. 49494, PFD at 281 ("The ALJ's recommend that the Commission reject Mr. Pollock's recommendation as inconsistent with Commission precedent and the rate design goals of uniform system rates, average cost ratemaking, simplicity and consistency.") (Nov. 12, 2019).

which contradicts the Commission's long-standing commitment to uniform, system-wide rates.

TCGA also takes exception to the number running calculations relative to the revenue increase distribution on Schedule C.4, arguing that the 43.26% base rate increase cap was not reduced consistent with the percentage reduction in the base rate revenue increase proposed in the PFD as compared to SWEPCO's requested base rate increase on rebuttal. For all of the reasons set forth in its exceptions, SWEPCO believes the Commission should decline to adopt the PFD's recommendation to reduce the base rate revenue increase requested by SWEPCO in its rebuttal case. However, SWEPCO does not dispute that the base rate increase cap should be adjusted consistent with any difference in the percentage increase of its base rate revenues that is ultimately approved by the Commission in this case. In other words, the base rate increase cap of 1.5x the system average base rate increase should be based on the revenue increase ordered by the Commission.

X. REVENUE DISTRIBUTION AND RATE DESIGN (STAFF)

Staff excepts to the PFD's recommendation that the four-year phased-in gradualism proposal presented by Staff witness Adrian Narvaez not be adopted by the Commission, and that SWEPCO's gradualism proposal should be adopted instead. Staff in its exceptions argues that SWEPCO's revenue distribution proposal does not go far enough in moving certain rate classes closer to cost of service, and that the rate increases for these classes (Cotton Gin, Oilfield Secondary, and Public Street and Highway Lighting) proposed by SWEPCO and recommended by the PFD are not great enough to set just, reasonable and equitable rates consistent with cost of service. However, it is undisputed that (a) SWEPCO's revenue distribution approach is consistent with the Commission's order in SWEPCO's most recent prior base rate case and moves all classes closer to cost, and (b) Staff's gradualism proposal has never been previously approved by or even proposed to the Commission for an electric utility. Moreover, Staff bases its proposal on an unrealistic assumption that the Test Year base-rate revenues will remain constant over the four-year phase-in period. Staff witness Mr. Narvaez admits that consumption by the rate classes will change between rate cases, and thus costs and revenues are subject to change as well.[253] Therefore, contrary to Staff's exceptions, classes will move further away from, instead of closer to, costs

[253] Tr. at 1414:13-21 (Narvaez Cross) (May 26, 2021).

under Staff's phase-in plan. [254]

As the PFD appropriately notes, because Staff's proposal is unprecedented, it will have unknown effects while requiring significant rate increases for the three targeted classes in consecutive years, in contrast to SWEPCO's methodology, which has been shown to be effective at moving classes closer to cost while preventing rate shock and ensuring that SWEPCO can recover its cost of service. Staff's exception to the PFD's recommendation regarding revenue distribution should be overruled.

XIII. OTHER ISSUES

A. Additional Issues - Appeal of Docket No. 40443 (TIEC)

In its exceptions, filed well after the evidentiary record closed and the PFD was issued, TIEC suggests that the Commission adjust the rates set in this proceeding to reflect a flawed calculation of the potential impact of a recent (and equally flawed) opinion issued by the Austin Court of Appeals.[255] TIEC's suggestion is legally inappropriate. Further, the calculations made by TIEC's counsel are inaccurate, assuming they would even be applicable under the circumstances.

It is improper for the Commission to consider the issue addressed in the Austin Court of Appeals opinion attached to TIEC's exceptions because the courts currently retain jurisdiction over the matter. A remand of the matter to the Commission, if any is ultimately ordered, will not occur until all appellate proceedings have been finally adjudicated and all appellate deadlines have finally expired.[256] SWEPCO believes the Supreme Court of Texas will reject, for a second time, the Court of Appeals' misguided effort to overturn the Commission's Docket No. 40443 findings and conclusions regarding SWEPCO's investment in the Turk power plant. SWEPCO and the Commission have jointly requested and been granted extensions of time to file their petitions for review at the Supreme Court of Texas. The Commission will not acquire jurisdiction over the matter until the appellate process is complete and a court issues a mandate ordering such a remand.

---

[254] Cross-Rebuttal Testimony of Karl Nalepa, CARD Ex. 8 at 7:22-8:13 (using the page number in the bottom center of the page).

[255] TIEC Exceptions at 17-18.

[256] *See* Tex. R. App. P. 18.1.

TIEC's attempt to incorporate the Court of Appeals opinion into this docket is legally inappropriate.

SWEPCO also notes that the calculations made by counsel for TIEC and attached to TIEC's exceptions are flawed and not based on the evidentiary record in this case. These calculations made by TIEC counsel are not evidence in this proceeding. Further, because TIEC has presented these calculations after the close of the evidentiary record, SWEPCO has not addressed them with rebuttal evidence. Even if one were to assume that a calculation of the type done by TIEC's counsel were applicable under the circumstances, a cursory review of counsel's calculations reveals significant flaws. In Docket No. 33891,[257] the Commission found the Turk plant to be the most reasonable approach to meeting SWEPCO's future power needs given the then-current cost estimate of ***constructing*** the Turk plant. However, in the calculations of TIEC counsel, all the ongoing capital investment made to enable the continued safe and reliable operation of the plant after it was placed in service is excluded from rates. This ongoing capital investment was unchallenged and found prudent in SWEPCO's previous rate case, Docket No. 46449, and unchallenged in this case. Further, TIEC counsel's calculations fail to use actual depreciation rates approved by the Commission in Docket Nos. 40443 and 46449. Finally, TIEC's counsel's calculations fail to use actual jurisdictional allocation factors that have changed over time.

The Supreme Court of Texas will soon be asked to review the Court of Appeals' second attempt to undermine the Commission's exclusive authority to decide factual disputes regarding SWEPCO's investment in the Turk plant. Until that appeal process is complete, the courts will retain jurisdiction over the matter. In the event there is any court-mandated remand to the Commission, the Commission will then determine what remedy, if any, is appropriate under the circumstances.

XIV. CONCLUSION

SWEPCO respectfully requests that the exceptions addressed in this Reply be denied and the PFD's recommendations on these issues be adopted for the reasons set out herein.

---

[257] *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization for a Coal Fired Power Plant in Arkansas*, Docket No. 33891, Order (Aug. 12, 2008).

Respectfully submitted,

Melissa Gage
State Bar No. 24063949
Email: magage@aep.com
aepaustintx@aep.com (Service)
Leila Melhem
State Bar No. 24083492
Email: lmmelhem@aep.com
aepaustintx@aep.com (Service)
400 West 15th Street, Suite 1520
Austin, Texas 78701
Telephone: (512) 481-3320
Facsimile: (512) 481-4591
AMERICAN ELECTRIC POWER SERVICE CORPORATION

William Coe
State Bar No. 00790477
Email: wcoe@dwmrlaw.com
Kerry McGrath
State Bar No. 13652200
Email: kmcgrath@dwmrlaw.com
Patrick Pearsall
State Bar No. 24047492
Email: ppearsall@dwmrlaw.com
P.O. Box 1149
Austin, Texas 78767
Telephone: (512) 744-9300
Facsimile: (512) 744-9399
DUGGINS WREN MANN & ROMERO, LLP

By: 
William Coe

ATTORNEYS FOR SOUTHWESTERN ELECTRIC POWER COMPANY

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on October 28, 2021, in accordance with the Second Order Suspending Rules issued in Project No. 50664 and Order No. 1 in this matter.

William Coe